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Published under the Direction of the Departments of History and Political Science of the University of North Carolina

VOLUME 30

4431

THE SOUTH IN ACTION:

A SECTIONAL CRUSADE AGAINST FREIGHT RATE DISCRIMINATION

By

ROBERT A. LIVELY

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INTRODUCTION

Frank Dixon, former Governor of Alabama and Chairman for two years of the Southern Governors Conference, concluded in 1944 that "Of all the outstanding and inexcusable messes which a policy of laissez faire has brought on an innocent people, the freight rate structure is about the worst."[1] So emphatic a judgment, delivered by a man notorious for his political conservatism, measures the need for careful investigation of this widely discussed issue. Although bandied about for years by southern publicists, the freight rate controversy is still badly neglected, on the one hand, by regional analysts who rely on the vivid inaccuracies of second-hand fact; and jealously guarded, on the other, by rate experts who revel in its linguistic and statistical complications. If responsibility must be assigned for the erroneous views and inadequate interpretations which have obscured the truth of these debates, then the economists and professional traffic men who specialize in rate studies must share the blame. Governor Dixon did not reach the above-quoted conclusion until he retired from public office, and could proceed "without the confusion of expert advice." These experts have held smugly to the view that the nation's rate structure should be subject only to their tender ministrations, and have sharply criticized "political" action in the matter. Their somewhat naïve persistence in isolating the South's recent gains through rate reform from the political levers by which gain was achieved, is the author's reason for attempting this study.

The southern campaign for uniform freight rates has been a crusade of great popular appeal, in which the major voices of business and political leadership have been forced to take positive stands. A report of this controversy is a story of sectional jealousy and greed, with North and South ignoring national well-being in their struggle for advantageous position in the rate structure. Sharing importance with the contest between North and South, moreover, is the division within the South itself, between the interests who look for gain and progress in the South as it is, opposed by groups willing to sacrifice the dubious security of the present for the vision of a better future. Southerners have chosen sides on purely logical grounds, and have pursued for once the demands of self-interest and personal ideology to normal fruition. Their action has been relatively free of the irrational fears—or rationally manipulated superstitions—which unbalance with violent emotion so many of the South's debates. Study of freight

[1] Frank M. Dixon, *Southern Freight Rates,* reprint from the Birmingham *Age-Herald,* September 22, 1944.

rates and their effect on southern progress is necessarily a cold, statistical affair, but it generates a cheerless light in which facts often charged but seldom documented, are exposed. Here may rest the importance of the South's campaign—the forces within the region who profit from its present condition have been clearly identified, and required to give rational accounting for their actions. Further, from the patterns of sectional organization with which relief from rate disparity has been pursued, there have developed valuable guides and powerful political instruments which may well become the tools for new southern crusades, new efforts to achieve the good life which is the region's hope and right.

THE SOUTH IN ACTION:

A SECTIONAL CRUSADE AGAINST FREIGHT RATE DISCRIMINATION

CHAPTER I

THE RATE STRUCTURE

Former Governor J. Melville Broughton, of North Carolina, once declared that the chief difficulty with freight rate experts is to get them to speak the English language. "As I have studied," he said, "I see the word 'structure' is very frequently used in connection with the Southern States. It looks to me like 'stricture' should be the word."[1]

A layman student of rate history finds it easy to sympathize with Governor Broughton, for practice of rate-making theory is a complicated, contradictory trade, possessed of a highly specialized terminology. Some of the processes and reasoning employed in setting freight charges seem at a casual glance better adapted to the theology of some mystic cult than to hardheaded business enterprise. Among rail men and shippers alike there is a positive reverence for things as they are which is an effective defense against intrusion by an outsider. But reduced to simple terms, rate making, in the words of Walter R. McDonald, is merely a "highly developed science of relativity."[2] From the complex tangle of argument and tradition in which this science is grounded, five words and phrases appear with such frequency that their use demands careful explanation. They are: *classification, classification territories, rate territories, class rates,* and *commodity rates.*

Classification

If the railroads of the United States set individual rates for each of the articles moved, for all the points to which they might be shipped, a published tabulation of these figures, as required by law, would contain about two hundred trillion rates.[3] Some grouping of similar items is obviously necessary. Before a given article can be assigned a charge for transportation, it must be compared, somehow, with other articles of like category so that some reasonable basis for a just fee may be reached. Goods related by physical composition, value, or competitive relationships, are given the same "rating," or "classification." Assignment to a rating in the classification tables permits a single scale of charges for many different articles. This assignment depends on many factors—tradition, competition, and the conditions incident to the transportation of the item in

[1] Southern Governors Conference, *Minutes of the Meeting* (Miami, January 11-13, 1942), p. 105.

[2] Walter R. McDonald, *Equalization of Freight Rates,* speech to the American Industrial Development Council, U. S. Chamber of Commerce (Washington, March 19, 1946), p. 5.

[3] Estimate by A. J. Ribe, *Kangaroos in Freight Rates,* reprint from *Nation's Business* (February, 1944), 1.

question. These basic factors are identified by one student as cost of handling as a result of bulk and weight, ability—or inability—to bear costs higher than the cost of handling, liability to damage, and the rates on analogous and competing articles.[4] In the early days of railroading, each road made up its own classification, with no attempt at uniformity. One early line, for instance, published its rates in five groupings, for "heavy goods," "light goods," "case goods," "logs," and "whiskey."[5] At one time in the East alone, there were 138 different systems of classification.[6] As the groupings grew more complicated, the practice was developed by which a single key rate was assigned to Class 1, or First Class, in the various classifications, and other classes were stated as percentages of the fixed first class rate. The tendency has been to give high-priced goods the higher percentages and cheap articles the lower, thus basing classification ratings on "what the traffic will bear."

Classification Territories

In recent years, with freight moving over several roads between origin and destination, there has been a consistent trend toward a common classification for the whole nation. The work of the Interstate Commerce Commission, since its creation in 1887, has been toward that end.[7] Today, however, the United States is divided into three major classification territories, known as "Official," "Southern," and "Western." Official Classification is employed in the area north of the Ohio River, and a line from Cincinnati through Kenova, West Virginia, to Roanoke, Suffolk, and Norfolk, Virginia; and east of a line from the head of Lake Michigan through Milwaukee to the Illinois state line, along this boundary to the Mississippi River, and along the Mississippi to its junction with the Ohio. Southern Classification is used south of Official, and east of the Mississippi River. Western Classification covers the area west of Official and Southern.[8] Each of these major divisions grew from arrangements made by the railroads in the latter part of the nineteenth century, and became official with the publication of the ICC-approved *Consolidated Freight Classification Number 1* on December 30, 1919.[9] This single volume lists more than 20,000

[4] Frank L. Barton, "Uniform Freight Classification and the Interstate Commerce Commission," *The Journal of Land and Public Utility Economics,* XVIII (1942), 312.

[5] Charles E. Widell, *Freight Rates With a Southern Accent,* reprint from *Nation's Business* (January, 1940), 1.

[6] Frank L. Barton, "Uniform Freight Classification and the Interstate Commerce Commission," *loc. cit.,* 315.

[7] *262 ICC 447,* p. 12. References to this single report on *ICC Docket 28300, Class Rate Investigation,* and *ICC Docket 28310, Consolidated Freight Classification,* hereinafter cited as *Class Rate Investigation,* are to the pagination of the mimeographed report issued before publication of the bound volume.

[8] *Ibid.,* pp. 10-11.

[9] Frank L. Barton, "Uniform Freight Classification and the Interstate Commerce Commission," *loc. cit., 320.* The Official Classification Territory was first set up for the region east of the Mississippi and north of the Ohio and Potomac rivers on April 1, 1887. An agreement in 1883 among several western roads marked the begin-

specific articles, from abrasives to zinc, and assigns to each a percentage of first class in each territory. There are numerous departures and special scales for smaller areas within the territories, but a set of uniform rules is followed for each of the major divisions.[10]

There are seven classes in Official Classification, twelve in Southern, and ten in Western. The percentages of first class rates assigned to the classes in each territory are compared in Table I.

TABLE I[11]
COMPARISON OF CLASSIFICATIONS IN THE THREE MAJOR TERRITORIES

% of Class 100 (First)	Class Designations		
	Official	Southern	Western
100	1	1	1
85	2	2	2
70	3	3	3
60	—	—	—
55	R26	4	4
50	4	—	—
45	—	5	A
40	—	6	—
37½	—	—	5
35	5	7	—
32½	—	—	B
30	—	8	C
27½	6	—	—
25	—	9	—
22½	—	10	D
20	—	11	—
17½	—	12	E

Not only is there variation among the percentage values of like-numbered classes in the three territories, but the same article may be assigned to a different rating in each. Of all freight moved, 2,782 articles, 13.33 per cent of the total, are given different ratings in each of the three. A measure of uniformity has been achieved, with 60.13 per cent, 12,554 items, given uniform classification in all three.[12] Where the same article is in different classifications in different territories, its assigned percentage

ning of Western Classification. The Southern Railway and Steamship Corporation, a pool at one time monopolizing southern roads, set up the first general Southern Classification in 1875.

[10] T. M. Henderson, *The Southern Class Rate Adjustment* (Nashville, 1943), p. 7.

[11] National Resources Planning Board, *Transportation and National Policy* (Washington, 1942), p. 81.

[12] *Class Rate Investigation,* p. 23. The ICC found the following variations in classification assignments among the territories in effect on August 3, 1942:

	Number of Ratings	*Per cent*
Total Ratings	20,878	100
Uniform in Three Classifications	12,554	60.13
Alike in		
Official and Southern	14,524	69.57
Official and Western	13,474	64.53
Southern and Western	15,206	72.83
Unlike in any two classifications	2,782	13.33

of first class may vary widely. Some items in Classification Five, 35 per cent in Official, are in classes valued from 17½ per cent to 55 per cent in Southern and Western.[13] Even if the first class rates were equal in every area, an article's classification would produce disparities in freight charges. Defenders of such a policy generally attribute these differences to varying transportation conditions, but one opponent of the system says that "Many of the differences in ratings are not due to actual differences in conditions, but come from mere differences of opinion of traffic officials."[14] Another declares that "The fundamental object of a [freight] tariff—that it should inform the prospective shipper—has been submerged in an inchoate mass of technicalities."[15]

Class Rates and Rate Territories

Although the problem of classification in the three territories is a basic factor in rate differentials, complaints against disparity have generally been directed at the policies followed in setting the rates themselves. Superimposed on the classification territories are five rate territories: Official, Southern, Southwestern, Western Trunk Line, and Mountain Pacific. In each of the five, first class rates are fixed at different levels, thus assigning to an article which has the same classification percentage a different dollars and cents charge for movement.

It will be clear that the first class rate is the key to all this commercial theory of relativity. On all the goods which move in freight traffic, and for all combinations of distances, this rate is the basis of the published maximum rate agreed upon by the railroads, and confirmed by the Interstate Commerce Commission. Here it must be emphasized that it is in many ways a theoretical rate scale, to which there have been made general and far-reaching exceptions. But in the class rate structure, with all articles assigned to classification percentages of first class, the actual charge for hauling freight rests on the amount in cents per hundred pounds, distance considered, which is stated as the first class rate. With a different level in each of the five rate territories, charges will obviously vary.

Rates in these five areas were determined by the ICC between 1925 and 1931 after a series of far-reaching investigations.[16] In each of these

[13] *Ibid.*, p. 21.

[14] Frank L. Barton, "Uniform Freight Classification and the Interstate Commerce Commission," *loc. cit.*, 319.

[15] M. G. DeChazeau, "Revision of Railway Rate Structures," *Southern Economic Journal*, V (1938), 18.

[16] These cases are: *Southern Class Rate Investigation, 1925, 100 ICC 513,* supplemented by *109 ICC 300, 113 ICC 200,* and *128 ICC 567*;

Eastern Class Rate Investigation, 1930, 164 ICC 314, supplemented by *171 ICC 481, 177 ICC 156,* and *203 ICC 357*;

Western Trunk Line Class Rates, 1930, 164 ICC 1, supplemented by *204 ICC 595;* and

Consolidated Southwestern Cases, 1927, 123 ICC 203, supplemented by *205 ICC 601.*

There is no uniform rate structure within Mountain Pacific Territory; the rates there are governed by several decisions, the most important of which is *Utah Traffic Association v. Atchison, Topeka, and Santa Fe Railway Company, 1931, 171 ICC 306.*

surveys and decisions, the effort of the Commission was to harmonize the rate relationships within the various territories, with less concern for inter-territorial relationships. Rates were set up after study of the existing traffic in the given area, and, according to the ICC, the scale for one territory was "neither in measure nor in progression . . . modeled after the other class rate scales which we have had occasion to prescribe."[17]

The controlling factors in these settlements have been variously described, but the chief determinant seems to have been simply the weight of tradition. Each major decision marked a considerable advance over conditions which had prevailed earlier, eliminating within the territories complications, variations, and disparities for which there was no conceivable excuse.[18] Before the findings in the *Southern Class Rate Investigation, 1925*[19] took effect, the Southern Territory was divided into five sub-territories: the Southeastern, including most of Alabama and Georgia; the Ohio River Sub-Territory, including most of Tennessee and Kentucky; the Carolina Territory, including the Carolinas and the southern edge of Virginia; the Mississippi Valley Territory, including Mississippi, part of Louisiana, and the western tips of Kentucky and Tennessee; and the Florida Territory. The old rates in these areas reflected competitive conditions resulting from the Atlanta and other basing point systems; charges on the all-rail routes from the old Northwest, and on the water routes along the Atlantic Coast and on the Mississippi River; and from varying theories of cost and value of transportation service in each of the districts.[20]

The southern rates fixed after the 1925 investigation, which took effect on January 15, 1928, brought to Southern Territory a generally uniform pattern of class rates.[21] The scale set up, known as the "Southern" or "K-2" Scale, was graduated to distances of 1,500 miles and designed for general application. Some disparities remained, the most notable being the arbitraries amounting to 15 per cent of the general southern scale which were added to shipments in the Florida peninsula. Arbitraries were also allowed for weak and short lines.[22] In 1936, important adjustments

[17] *Class Rate Investigation,* p. 213.

[18] William Harry Joubert, "History of Railway Freight Rates in the South," unpublished Doctor's Dissertation, University of North Carolina, 1943, pp. 140-141. In assigning responsibility for the long delay in needed revision of southern rates, Professor Joubert stated that from 1887 to 1906, the United States Supreme Court prevented adjustments through adverse decisions. Between 1906 and 1910, southern shippers did not actively seek revisions; and after 1910, the ICC, with considerably increased powers, "was more responsible than any institution for the continuance of the abuse of local discrimination in the southern rate structure." He adds that the southern railroads have been the strongest opponents of any change whatever throughout the period of national regulation.

[19] *109 ICC 513.*

[20] Joubert, *op. cit.,* pp. 145-148.

[21] *Class Rate Investigation,* p. 77.

[22] *Ibid.*

were made for traffic out of the border states at the northern edge of Southern Territory.[23]

The accompanying map illustrates the national boundaries and the differences in class rate levels which were determined by the ICC in the decisions covering each of the major territories. Class rates in the South are approximately 137.7 per cent of those within Official Territory.[24] These disparities are even more pronounced in the Western Trunk Line, Southwestern, and Mountain Pacific Territories, as Table II illustrates.

The comparison made in the foregoing table is based on *intraterritorial* rates. For movements between the territories, these rates must be blended in some fashion to arrive at a through rate. No one scale determines the rates between any two territories. Between Southern and Official, two

TABLE II[25]

Relationship of Intraterritorial Scales of First Class Rates up to 1,500 Miles

To:	Relationship of:						
	Official	Southern	Western Trunk Line				Mountain Pacific
			Zone I	Zone II	Zone III	Zone IV	
Official.....	100.0	136.6	130.4	148.3	163.1	187.2	173.0
Southern.....	73.2	100.0	95.4	108.5	119.4	137.0	126.6
Western T. L.							
Zone I	76.7	104.8	100.0	113.7	125.1	143.6	132.7
Zone II	67.4	92.1	87.9	100.0	110.0	126.2	116.7
Zone III.....	61.3	83.7	79.9	90.9	100.0	114.7	106.0
Zone IV	53.4	73.0	69.6	79.2	87.1	100.0	92.4
Mountain-Pacific.....	57.8	79.0	75.4	85.7	94.3	108.2	100.0

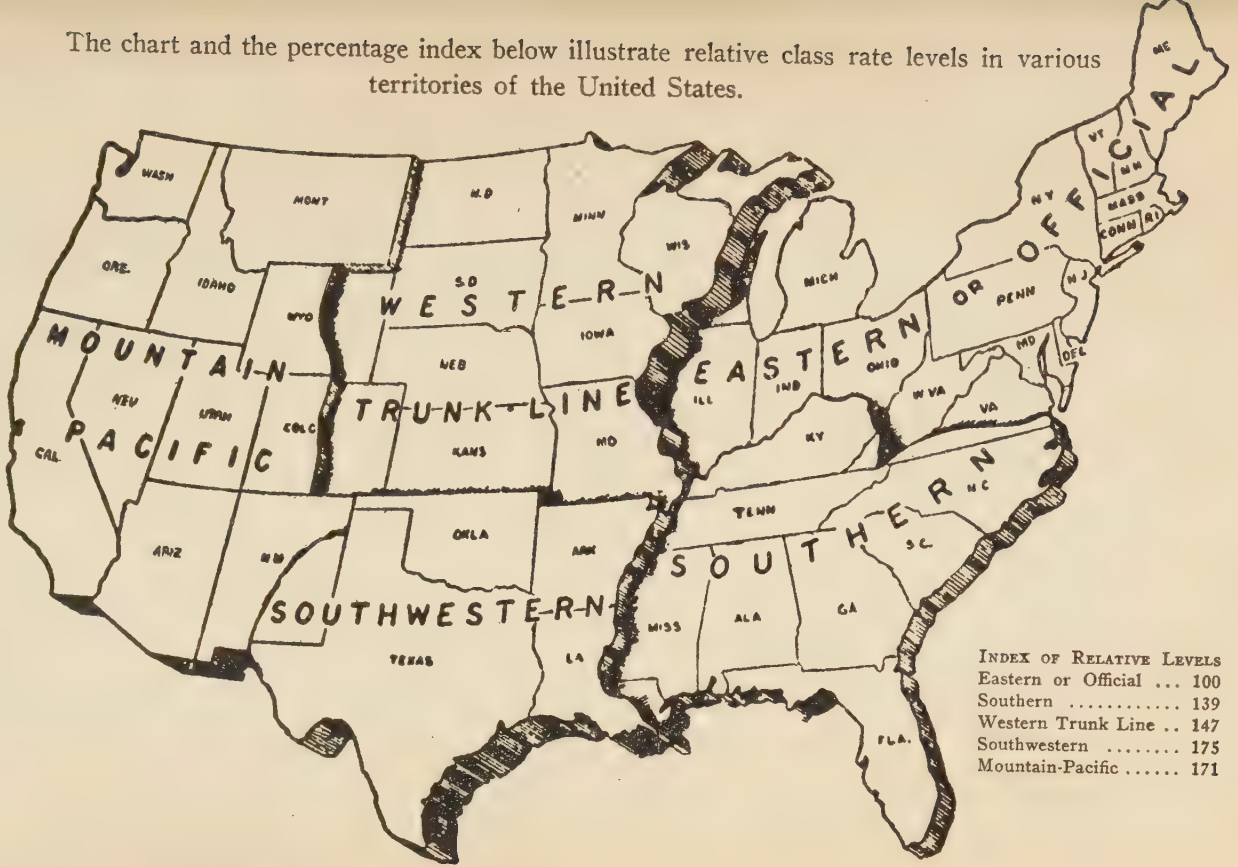
[23] *213 ICC 259.*

[24] *Class Rate Investigation,* p. 135. The following table, and map on page 9, compare the published first class rates in Official and Southern Territories.

Distance (miles)	Official Scale Rates (cents)	Southern Scale Rates (cents)	Per cent Southern of Official
50	47	57	121.3
100	62	79	127.4
150	73	96	131.5
200	80	112	140.
300	96	134	139.6
400	109	156	143.1
500	122	173	141.8
600	135	189	140.
700	149	206	138.3
800	160	222	138.8
900	171	235	137.4
1,000	182	249	136.8
		Average Per cent Southern of Official:	137.7

[25] Board of Investigation and Research, *Report on Interterritorial Freight Rates, House Document 303,* 78 Cong., 1 Sess. (1943), p. 20. Hereinafter cited as *BIR Report.* The figures of this table vary slightly from those cited in Footnote 24 because of the variation in distances used in computing the average levels.

The chart and the percentage index below illustrate relative class rate levels in various territories of the United States.



INDEX OF RELATIVE LEVELS

Eastern or Official	100
Southern	139
Western Trunk Line	147
Southwestern	175
Mountain-Pacific	171

Source: J. Haden Alldredge, *The Interterritorial Freight Rate Problem of the United States, House Document 264,* 75 Cong., 1 Sess., 1937, p. 13.

types of rates generally govern: (1) the "K-2—Q-1" formula, a distance basis scale, adds "Q-1" differentials to the basic Southern rates for traffic through the Ohio cities gateways; and (2) "key-point" rates, reflecting water competition on the Atlantic and Gulf coasts, are set for traffic between key points in the northeastern area to points in the Southeast.[26] The effect of these interterritorial scales is to give rates to Southern-Official Territory movements which are higher than Official, but slightly lower than the Southern intraterritorial scale. The longer the haul in Southern territory, the more nearly does the interterritorial rate approach the Southern level. Even if more than half the haul is in Official, the through-rate level is usually closer to the higher Southern scale. The rates constructed on the key-point basis are generally lower than those drawn from the "K-2—Q-1" scales.[27] Shipments between Southern and Official Territories are governed by Southern Classification. Rates between the South and western territories are based generally on groupings around key points.[28]

Class Rates and Commodity Rates

If the class rate structure hitherto described were employed for all freight movements within and between the territories, debate over the justice of the varying levels might be easily resolved. Unless the higher levels in the South and West were justified by the costs of rendering transportation service, then rate parity for all sections could scarcely be denied. But general conclusions on regional rate levels cannot be drawn from study of class rates alone. Class scales are published for all possible movements, to fit the needs of the occasional shipper, and the shipper of high cost goods. A producer who ships in considerable quantity may discover that the comparatively high charges of the class structure prohibit his use of the railroads in regular shipments; so by conference with the roads, by litigation before the ICC, or by threat of taking business to a competing transportation medium, he may obtain a special rate. Actually more than 95 per cent

[26] *Class Rate Investigation,* pp. 81-82.

[27] *BIR Report,* pp. 154-168. Following is a comparison of representative key-point rates with K-2—Q-1 rates, showing the Eastern and Southern intraterritorial first class rates for the same distance:

Between Augusta, Ga., and	Distance	Key Rate	K-2—Q-1 Rate	Key Rate Per cent of K-2—Q-1	Southern Rate	Eastern Rate
Albany, N. Y.	920	196	215	91.2	217	158
Baltimore, Md.	604	165	173	95.4	175	125
Boston, Mass.	1016	196	224	87.5	229	168
Cumberland, Md.	656	178	180	98.9	181	130
Harrisburg, Pa.	684	173	186	93.0	187	135
New York, N. Y.	789	180	197	91.4	202	145
Philadelphia, Pa.	696	173	186	93.0	187	135
Reading, Pa.	715	173	189	91.5	190	137
Rochester, N. Y.	951	209	218	95.9	223	163

[28] *Ibid.*

of all freight traffic, North and South, moves on such exceptions to the class rate structure.[29]

These alterations in the basic rate levels are described as "column," "exception," or "commodity" rates. Column and exception rates are designed to meet special conditions, and are better suited to the needs of the shipper and the railroad than are the published rates. They have the advantage of being listed in percentages of first class, which makes easier the computation of charges, and which places them under the rules and relationships established for the use of class rates. Commodity rates are published for specific articles moving between stated points, and are not related by fixed percentages to the class scales.[30] E. L. Thornton, Traffic Manager of the New Orleans Association of Commerce, described the genesis of such a departure from class rates as follows:

> If the Audubon Park Zoo in New Orleans happens to have an extra baby elephant and wants to ship it to Bayou Goula, La., it may do so on a rate provided for the occasional and sporadic shipment. But if the Zoo should decide to go into elephant raising as a business, it could consult the railroads, and if found to be necessary, a line of rates on baby elephants from New Orleans would be put into effect.[31]

The various exceptions to the class scales, according to E. R. Oliver, Vice-President of the Southern Railway System, "represent the acme of refinement in rate-making. They comprehend the competitive circumstances of transportation and marketing; indeed, in some instances, of manufacturing itself."[32] Commodity rates, hereinafter used to represent all exceptions to the class scales, generally are in favor of the shipper. They carry heavier or less valuable goods, goods unable to bear the cost which may be assigned in the class rate structure. They represent the bargaining power of the shipper in securing a lower rate for regular movement than is normally prescribed for a single shipment. Full class rates, on the other hand, are paid to carry goods of higher value, in the cost of which freight rates would play a less important part, or by goods, as some Southerners contend, which are not moving in sufficient quantity to force a lower rate. The general effect of this pattern of competitive relationships is to place high-value manufactured items on class rates, and cheaper, low-grade manufactured goods, or raw materials, on commodity rates.[33]

The relative levels of commodity rates in the five rate territories cannot be accurately compared, since recent general investigations by the ICC have been concerned with the class rather than the commodity rate structure.

[29] *Class Rate Investigation,* p. 112.

[30] *Ibid.,* p. 127.

[31] Quoted by A. J. Ribe, *Kangaroos in Freight Rates,* reprint from *Nation's Business* (February, 1944), 2.

[32] E. R. Oliver, *Southern Freight Rates and Their Relationship to Southern Industry,* speech to the Birmingham Kiwanis Club (September 19, 1939), p. 4.

[33] The multitude of exceptions which can be made to this general statement admit many technical arguments over the actual use of class and commodity rates.

On certain important commodities the South has lower rates than the North—articles like brick for building and facing, fertilizer, coke, lime, logs, lumber, pig iron, pulpwood, sand, gravel, crushed stone and slag, iron and steel scrap, and iron ore.[34] From knowledge of these specific rates, opponents of revision in the nation's rate structure have argued that low commodity rates offset the class rate differential against the South. Alvin W. Vogtle, prominent Birmingham shipper of coal, estimated by statistical sampling in 1940 that on 47.7 per cent of the traffic moved, the South has lower rates than the North; on 22.4 per cent, parity with the North; and that on only 7.2 per cent of actual interterritorial movement does the South have higher rates.[35] The Board of Investigation and Research, created by Congress to study transportation questions under provisions of the Transportation Act of 1940, estimated that the average levels of all southern rates were from 3 to 5 per cent higher than the eastern rates.[36] The Interstate Commerce Commission,[37] after examination of such estimates, concluded in 1945 that the facts available justify no conclusion on the average levels of commodity rates in the various territories. Most authorities agree, however, that the frequently cited 37 per cent penalty a southern shipper is reputed to pay when he meets on an equal basis his northern competitor, applies to a relatively small portion of the South's freight movements.

[34] *Class Rate Investigation,* pp. 164-170.

[35] Alvin W. Vogtle, *A Non-Technical Presentation of the Inter-Territorial Freight Rate Question as Affecting the South,* speech to the Southeast Shippers Advisory Board (Jacksonville, March 21, 1940), p. 3.

[36] *BIR Report,* p. 153.

[37] The Interstate Commerce Commission made the following estimate of the division of traffic to class, commodity, and exception rates in its decision on the *Class Rate Investigation,* p. 36:

Territories (within or one to another)	Percentage of Traffic Moved On		
	Class Rates	Exception Rates	Commodity Rates
Official	5.8	17.6	76.7
Southern	1.8	6.0	92.2
Western Trunk Line	.6	.2	99.2
Southwestern	2.4	4.4	93.2
Mountain Pacific	1.7	—	98.3
Official to Southern	12.6	36.3	51.1
Southern to Official	.9	4.9	94.2
Southern to Western Trunk Line	1.5	13.5	85.0
Western Trunk Line to Southern	6.1	3.1	90.8
Southern-Mountain Pacific	4.1	4.9	91.0
Mountain Pacific-Southern	1.5	—	98.5
Southern to Southwestern	6.1	22.1	71.8
Southwestern to Southern	1.2	4.3	94.5
All Territories to Official	4.8	14.4	80.8
Official to All Territories	6.7	19.4	73.9
All Territories to Southern	4.1	11.9	84.0
Southern to All Territories	2.1	6.2	91.7
All Territories to All Territories	4.1	10.7	85.2

Effects of the Rate Structure

When the Interstate Commerce Commission reached its conclusions in the *Southern Class Rate Investigation, 1925,* it declared that

> the new class rate structure should look . . . to the future. . . . [It] should, for example, be so framed as to facilitate the elimination not only of special classification exceptions, but also of many commodity rates which provoke complaints of discrimination and have no other excuse than an inadequate and imperfect class rate structure.[38]

Such an end was not achieved. Since this general settlement, traffic on class rates has steadily diminished. More and more exception rates were quoted as new transportation mediums began to offer competition, and as a few southern industries became strong enough to demand and secure commodity scales.[39] Only 1.8 per cent of the traffic within the South, and 2.1 per cent of its shipments to other territories today ride full class rates. The effect of the southern settlement was simply to recognize and simplify a rate structure which had developed through earlier decades—a system characterized by relatively low rates on the heavy-loading raw commodities and semi-finished products, and burdening the small proportion of high-grade goods with more costly transportation. The Official Territory revisions, on the other hand, with lower class rate patterns, favored that area's established concentration of finished manufactures. The disparities thus fixed might go unquestioned were they designed for a static economy. But critics of the system argue that variations in territorial rate levels tend to perpetuate existing regional specializations, and check the growth of new industries in the South and West.[40] It should be observed, however, before too much emphasis is accorded the influence of freight rates on industrial location, that transportation expenses are a very small percentage of total costs. In 1939, only 5.3 per cent of the destination value of manufactured commodities could be assigned to freight charges.[41] Differentials between the rate territories would be a fraction of this amount. The importance of the differentials is relative rather than absolute; where competition is keen at a given market point, a slight change in costs may bar the producer suffering a rate disparity. The extent to which this burden has retarded industrialization in the South is difficult to estimate. Industries are located after study of the availability and cost of raw materials, the cost of fuel and power, the supply of sufficiently trained labor and ready capital, and the proximity of the proposed location to market centers. Less tangible factors, such as the momentum of an early start, or the vigor of local industrial leaders, may actually govern the choice of a business site.[42]

[38] *100 ICC 513,* p. 603.
[39] *Class Rate Investigation,* p. 112.
[40] *BIR Report,* p. 239.
[41] *Class Rate Investigation,* p. 190.
[42] *Ibid.*

It is reasonable to assume, however, that freight rates are associated to a considerable degree with the dissimilar economic development of Southern and Official Territories. Extreme critics of the rate structure have declared the high class rates of the South responsible for the region's low proportion of high grade manufactures. Defenders of the system hold that freight charges play an inconsequential part in business growth, and point to the rapid increase of southern manufacture between 1919 and 1939, despite high rate levels. Both groups present elaborate statistics to support their views. In considering rate revisions, the ICC has recognized the relevance of studies comparing economic conditions in the North and South, and has attempted to consider technical rate questions in the light of their association with the material prosperity and resources of the regions in question.[43]

Southern witnesses in recent litigation testified that Official Territory, with only 16 per cent of the nation's land, has 53 per cent of the U. S. population, 55 per cent of the gainfully employed, and 69 per cent of the manufacturing industries.[44] ICC statisticians placed these figures some-

TABLE III

Population, Workers, Value of Manufactured Products; and Increase in Value of Manufacture, 1919-1939

Item	Amounts (Values in $1000's)	% of U. S.	% of Increase and Decrease 1919-1939
Official:			
Population, 1940	66,796,119	50.73	
Gainful Workers, 1930	24,952,861	51.1	
Income, 1940	46,353,000	61.38	
Value of Manufactured Products			
1919	44,508,154	71.3	
1939	38,550,160	67.8	(—) 13.38
Value Added by Manufacture			
1919	18,701,077	74.7	
1939	17,616,297	71.4	(—) 5.8
Southern:			
Population, 1940	21,270,789	16.15	
Gainful Workers, 1930	8,206,697	16.8	
Income, 1940	6,629,000	8.78	
Value of Manufactured Products			
1919	4,517,728	7.2	
1939	5,685,323	10.0	25.84
Value Added by Manufacture			
1919	1,880,300	7.5	
1939	2,325,207	9.4	19.13

Source: *Class Rate Investigation*, pp. 107-110. Population and income figures are from *BIR Report*, p. 225.

[43] *Ibid.*, pp. 189-194.
[44] *Ibid.*, p. 190.

what lower[45] (see Table III), but the northern region is patently the country's richest market area, purchasing 53 per cent of all consumer necessities, and 62 per cent of consumer luxuries.[46] If southern producers, with only 16 per cent of the population in their home area, are to enjoy any notable expansion, they must sell in the rich and populous Northeast.

But in 1939 the value of manufactured goods sold outside Official Territory by shippers within the area averaged $125.77 per ton, contrasting with an average of $24.32 per ton for shipments out of Southern, Southwestern, and Western Trunk Line Territories. Of these figures, the value added by manufacture to Official shipments was $54.69 per ton, while that of the outlying regions was $4.18.[47] The northern area contributed

TABLE IV

MINERAL AND POWER RESERVES AND VALUES, SOUTHERN AND OFFICIAL TERRITORIES

Item	OFFICIAL		SOUTHERN	
	Amount	% of U. S.	Amount	% of U. S.
Iron Ore, 1935	147,000,000 tons	3.7	2,120,000,000 tons	53.2
Metallic Copper, 1936	.....	...	120,000 tons	.5
Lead, 1936	85,000 tons	2.57	90,000 tons	2.73
Zinc, 1936	2,940,000 tons	24.17	510,000 tons	4.19
Value of all products of mineral industries in 1000's of dollars:				
1902	454,223	57.0	50,866	6.4
1909	623,457	51.6	72,101	6.0
1919	1,526,902	48.9	228,096	7.3
1929	1,385,854	32.6	261,221	6.1
1939	1,074,824	33.4	214,126	6.6
Bituminous Coal, 1937	602,389,369,000 tons	42.79	235,092,383,000 tons	16.70
Anthracite Coal, 1937	14,589,460,000 tons	94.64	488,976,000 tons	3.17
Petroleum, 1939	583,403,000 bbls.	3.4	37,545,000 bbls.	.2
Natural Gas, 1945	6 trillion cu. ft.		3 trillion cu. ft.	
Total energy of mineral fuel resources, 1937	.....	25.1	.....	9.6
Potential water power, 1936	Available 90% of time: 7,686,000 h.p.	17.98	Available 90% of time: 4,328,000 h.p.	10.12
Production of electric energy, fuel and hydro, 1937	72,040,917,000 kwh	59.51	11,637,940,000 kwh	9.61

SOURCE: *Class Rate Investigation*, pp. 92-100.

[45] The variation in these figures is explained by efforts of southern witnesses to estimate the population shift incident to the national defense and war effort, and by the difficulty of using census figures based on political territorial divisions. The freight rate territories cut through state and county lines in many cases.

[46] *Class Rate Investigation*, p. 191.

[47] *Ibid.*

71.4 per cent of the total value added by the nation's manufacturing in 1939, while the South added only 9.4 per cent.[48] Income figures, both from manufacturing and from agriculture, reflected this low degree of southern industrialization. Despite extensive natural resources, the South

TABLE V

FARM AND TIMBER RESOURCES OF SOUTHERN AND OFFICIAL TERRITORIES

Productivity of farm lands, graded according to ability to produce without irrigation or additional drainage, per cent of U. S. totals

	Official	*Southern*
Excellent	27.13	2.65
Good	25.37	10.61
Fair	20.64	21.50
Excellent to Fair	23.15	15.12
Poor	18.24	21.23
Incapable of Tillage	6.24	6.99
All Grades	14.38	12.51

Value of Farm Products, 1899-1939

Year	*Official*			*Southern*		
	Value in 1000's of dollars	% of U. S.	% of Increase	Value in 1000's of dollars	% of U. S.	% of Increase
1899	1,304,671	34.9	—	685,523	18.3	—
1909	2,021,385	31.1	54.9	1,159,725	17.8	69.2
1919	4,760,839	28.0	135.5	3,159,729	18.6	172.5
1929	3,161,325	26.5	(−) 33.6	2,117,559	17.8	(−) 33.0
1939	2,657,625	29.2	(−) 15.9	1,622,740	17.8	(−) 23.4

Stand of saw timber on commercial forest land by character and growth, 1938: per cent of U. S. total in millions of board feet

		Official	*Southern*
Softwoods:	Old Growth	2.54	3.30
	Second Growth	9.92	32.07
	Total Softwoods	4.20	9.79
Hardwoods:	Old Growth	28.24	40.70
	Second Growth	36.95	32.83
	Total Hardwoods	33.38	36.06
Total Saw Lumber		8.68	13.82

SOURCE: *Class Rate Investigation*, pp. 102-106.

[48] See Table III.

lags well behind the nation in utilization of the minerals, power, and lands which are its physical heritage.[49]

Spokesmen for the *status quo,* who defend existing rates with percentage figures illustrating southern industrial expansion between 1919 and 1939, assert that Official Territory suffered a decline of 13.38 per cent in the value of its manufactured products during these years, while the South gained by more than 25 per cent—high freight rates notwithstanding.[50] Critics answer this argument by noting the South's low percentage of the national total in both years. Walter R. McDonald compared statistics of former type with those of a Clarke County, Georgia, farm agent who reported to the State Department of Animal Husbandry a 50 per cent death rate in his county's sheep. When a crew of experts arrived, they discovered that Clarke County had only two sheep to start with.[51]

The Interstate Commerce Commission has concluded in a series of recent decisions that the nation's class rate structure "reacts to the disadvantage" of southern and western manufacturers, and "tends to restrict the growth and expansion" of business in those areas.[52] Extensive evidence has been introduced to illustrate the movement of southern and western raw products to Official Territory for final manufacture, and their subsequent return, at higher prices, to their points of origin[53]—an uneconomic arrangement, to say the least. The reasons for the long survival of this high class, low commodity rate structure—well suited to an earlier chapter in the nation's econmic history—lie in the determined opposition of business and railroad interests of the North and South, which until 1945 were able to defend the system to the satisfaction of the ICC.

[49] See Tables IV and V.
[50] See Table III.
[51] Walter R. McDonald, *Equalization of Freight Rates,* speech to the American Industrial Development Council, U. S. Chamber of Commerce (Washington, March 19, 1946), p. 10.
[52] *Class Rate Investigation,* p. 265.
[53] *Ibid.,* p. 193.

CHAPTER II

SECTIONAL AWAKENING

The realization that profitable sales of class-rated goods in the rich and concentrated markets of the Northeast lagged under an artificially high freight rate burden did not spring suddenly into the mind of the South. Railway charges have always been a "problem" in the agricultural areas of the United States, and the gradual development of a minor crusade against a specialized feature of the rate structure has ample precedent in southern and western history. Many a southern politician and publicist shares boyhood memories similiar to those of Robert S. Henry, railway spokesman, who told the Nashville Kiwanis Club in 1943 that

> When I was growing up in Nashville . . . it was an article of faith among most of us that Nashville was the finest city in the world, with the finest future, except for the fact that it was being "discriminated against" by the railroads. Among my earliest impressions was that of a malevolent influence called "Ellanen." I didn't know then that the phrase stood for the initials L and N, and if I had, I wouldn't have known what the initials stood for. But I did know that whatever "Ellanen" was, it was something of evil and oppressive intent.[1]

Vice-President E. R. Oliver, of the Southern Railway System, bemoans current manifestations of such an attitude when he reads of "the indictments that have been hurled at the Southern freight rate set-up. I naturally wonder how it could be possible that railroad traffic men, working daily with Southern industry, could have managed through all these years to do *everything* wrong. . . ."[2]

As a matter of fact, the rather startling vigor with which agitation for rate parity has been sustained is a compound of genuine grievances and shrewd maneuvers. When the South was spotlighted in the late 1930's as a national economic problem, it found the freight rate controversy a tailored defense for more deep-rooted sectional ills. Many a business man, opposing all efforts to raise wage scales or shorten hours, welcomed a chance to use railroad charges as an apology which could be delivered with no responsibility for personal action. The rail interests were unaccountably slow to rise in their own behalf; they delayed too long presentation of

[1] Col. Robert S. Henry, *The South and Its Railroads After the War,* speech to the Nashville Kiwanis Club (April 23, 1943), p. 3.

[2] E. R. Oliver, *Southern Freight Rates Favor Southern Industrial Development,* speech to the Atlanta Rotary Club (November 22, 1943), p. 5.

the expert veil of contradictory fact with which they obscured the later issues of the parity campaign.

Public concern over the southern rate structure followed close on the heels of the Great Depression. The general ICC investigations and decisions of the middle twenties, by which the region's class rate patterns were set, did not take effect until 1928, and business collapse followed too soon thereafter to permit an accurate measurement of the result. In a supplemental report to the southern settlement, however, the ICC had said:

> We are also persuaded that any attempt at a final solution of the interterritorial rate problem, at least so far as southern border territory is concerned, should be postponed pending the outcome of the Eastern Class Rate Investigation.[3]

But the completion of the Eastern studies in 1930 brought no end to this postponement. Complaints soon followed and within a few years took definite form. On March 21, 1934, members of the Southern Traffic League, an organization of southern shippers, met at Atlanta, and adopted a program calling for lower class rate levels within the South, readjustment of Southern-Official rates, and for simpler classification rules.[4] Representatives of the League asked for an immediate conference with the southern railroads for discusison of this program, but were unable to win such a hearing before May 24, 1935. At this time, the carriers refused to consider any revision of the class rate structure.[5]

The Board of Governors for the League then consulted representatives of the Southeastern Association of Railroad and Utilities Commissioners, an organization of the public regulatory boards in ten southeastern states. A member of this group, Jud P. Wilhoit, then chairman of the Georgia Public Service Commission, arranged for another conference with the carriers, but the roads refused to alter their earlier stand.[6] The League Board then decided, on September 3, 1936, to join with the Utilities Commissioners in an appeal to the ICC for a general investigation of southern class rates. This move was approved by a meeting of the full League membership at Greensboro, North Carolina, on September 18. Petitions were filed September 25 requesting the Commission to "remove the undue burden now resting on southern shippers."[7] The League petition declared that the South had no handicap except remoteness from principal markets, exaggerated "by the maintenance of excessive and unreasonable class rates which bear no relation whatsoever to what are just and reasonable rates. . . . The present antique and obsolete structure

[3] *109 ICC 300,* p. 323.

[4] T. M. Henderson, *Stenographers Minutes Before the Interstate Commerce Commission Docket No. 28300, 28310, Class Rate Investigation, 1939* (Washington, 1939-1944), p. 5013. Hereinafter cited as *Transcript of Testimony.*

[5] *Ibid.,* p. 5016.

[6] *Ibid.*

[7] *Railway Age,* CI (1936), 531.

should be replaced by something modern that will combine improved service with reduced cost."[8] Similar complaints were made individually by seven state commissions, a dozen or more chambers of commerce, traffic bureas, and like groups.[9]

The ICC agreed November 20 to grant these requests, and announced on February 16, 1937, the second *Southern Class Rate Investigation, ICC Docket 27655,* ten years after it had admitted the probable need for such further study and revision.[10] The Commission plan was to make a survey of the class rates between Official and Southern Territories.

The growing unrest among southern shippers was soon reflected outside the highly specialized meetings of traffic experts and shippers' leagues. Two Georgia legislators, Senator Walter F. George and Representative Carl Vinson, introduced resolutions in the Congress on June 4, 1934, calling for an examination of the southern rates.[11] Both Georgia Senators, George and Richard B. Russell, attempted again in early 1935 to direct congressional attention to the shippers' problem.[12] Senator Russell went beyond request for investigation, introducing a resolution declaring that "it is to the sense of Congress" that the best interest of the people will be served by uniform transportation rates.[13] On March 20, 1935, the legislature of Tennessee by joint resolution petitioned Congress to correct rate inequalities and establish the principle of uniformity.[14] Representative Hampton P. Fulmer, of South Carolina, extended in the *Record* on August 9, 1935, a long speech attacking discriminatory rates, and asking further representation for the South on the ICC.[15]

More important, in view of its later prominence, was the introduction of HR 3042 by Representative Robert Ramspeck, of Georgia, on January 7, 1935. The Ramspeck Bill was designed to amend the Interstate Commerce Act so that freight rates at the destination of shipment, whatever its origin, would be no more than those prevailing within the destination territory.[16] This bill, having died without a hearing like the others cited, was reintroduced in the 75th Congress as HR 2927, on January 13, 1937.[17] The measure had to wait, however, until 1939 and the 76th Congress before it was considered by the House Committee on Interstate and Foreign Commerce.

The pending ICC investigation and the murmur of concern in Congress were overshadowed by dramatic adoption of the issue by nine southern

[8] *Ibid.*
[9] *Ibid.*
[10] *Ibid.,* CII (1937), 341.
[11] *Congressional Record,* 73 Cong., 1 Sess., p. 10345.
[12] *Ibid.,* 74 Cong., 1 Sess., pp. 105, 544.
[13] Senate Concurrent Resolution 6. *Ibid.,* p. 544.
[14] *Ibid.,* p. 4045.
[15] *Ibid.,* pp. 12845-12849.
[16] *Ibid.,* p. 178.
[17] *Ibid.,* 75 Cong., 1 Sess., p. 215.

governors in the spring of 1937.[18] Whether their breathless arrival—recorded in eight-column banner headlines—was in response to public demand, or was arranged in the hope of a popular and politically profitable publicity campaign, they tumbled over each other in a scramble to catalogue the evils of the rate structure, and to describe the effects of the block thus thrown across the road of southern progress. Their enthusiasm, whatever its motivation, brought new vigor to southern efforts, and forced increased attention to the public interest in the issues at stake.

The governors and governors-elect of nine southeastern states—North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Tennessee, and Kentucky—had first assembled at Warm Springs, Georgia, in late 1934 for a discussion of common problems.[19] A second meeting followed at Montgomery, Alabama, in 1935, but it was May, 1937, before the state executives created a formal organization for the prosecution of their interests in the freight rate fight.[20]

On April 11, 1937, Governor E. D. Rivers, Georgia, issued a call for the southern governors to meet within thirty days to protest against freight rate discrimination before the ICC.[21] Governors or their representatives from the above-mentioned states assembled at Washington on April 27, where, at the suggestion of Governor Rivers, Governor Bibb Graves, of Alabama, was chosen to lead the group.[22] The governors were joined in their Washington meetings by many southern congressmen, who agreed to delay legislative action until the state executives had pressed their com-

[18] T. M. Henderson, *Transcript of Testimony*, p. 5018.

[19] Bibb Graves, *Radio Address of Governor Bibb Graves, Chairman, Southern Governors Freight-Rate Conference, Broadcast Over Columbia Network from Washington, D. C., on May 25, 1937*, p. 1. Hereinafter cited as *Radio Address*.

[20] Walter R. McDonald, *Transcript of Testimony*, p. 5113. No effort is made in this thesis to trace the full development of the Southern Governors Conference, nor to catalogue the many activities in which that organization has engaged. Working without a permanent office or secretariat, the group has maintained few records, and constantly changing personnel complicates this source problem.

The guiding spirit of the Conference throughout its early years was Lawrence Wood "Chip" Robert, Jr., prominent Georgia contractor and past secretary of the Democratic National Committee. Robert, in a letter to the author dated March 17, 1947, says of the Conference: "I set this organization in motion, financed it and got it going well in 1936 and had one of my valuable associates, Mr. Carroll Downes, as Executive Director. . . . We have not been active in its affairs during the war period because of the pressure of other business and I must say that without this leadership and executive control it has not been progressing with any effectiveness."

Sources for the Conference activities in this study are minutes of its meetings at Miami, January 11-13, 1942; Mobile, July 21-22, 1945; New Orleans, December 7-8, 1945; and newspaper and periodical accounts of its other meetings.

[21] New York *Times*, April 12, 1937.

[22] Atlanta *Constitution*, April 28, 1937. The states participating were represented by Gov. Graves, Alabama; Gov. Rivers, Georgia; Gov. Olin Johnson, South Carolina; F. E. Harrison for Gov. Fred Cone, Florida; Robert E. Webb for Gov. A. B. Chandler, Kentucky; Attorney-General Greek L. Rice for Gov. Hugh White, Mississippi; Wade O. Martin for Gov. Richard Leche, Louisiana; James Wolfe for Gov. Clyde Hoey, North Carolina; and Porter Dunlap for Gov. Gordon Browning, Tennessee.

plaint. Representative Rampeck, fast becoming spokesman for rate revisionists in Congress, declared that he was holding his bill as an "ace in the hole" should the governors' appeal to the ICC fail.[23] After this preliminary meeting, the Southeastern Governors Freight-Rate Conference organized formally in a second gathering at Atlanta on May 10.[24] Virginia, it will be noted, was not a party to this activity; most of her area lies in Official Territory. Kentucky was a lukewarm participant, and her favored position adjacent to Official Territory prompted her to withdraw from the organization before the Governors Case reached the ICC.[25]

The Atlanta meetings were attended by scores of interested Southerners, including governors, industrialists, rail officials, traffic experts, and utilities commissioners from every part of the South. Governor Rivers opened the assembly with the prediction that "Georgia's future lies in the success of this battle. . . . In my opinion if we win this fight we will open up for Georgia an industrial era the like of which we never before dreamed of." Governor Graves explained that removal of class rate differentials against the South would result in higher wages for the region, increased consuming power, and would enable fuller contribution to the general prosperity of the nation.[26] "If we can beat these barriers down," he said, "you will see millions of dollars worth of southern products going into areas north of the Ohio River and west of the Mississippi."[27]

From the start there was confusion in both the purpose and method of the Governors' campaign. One in their public determination "to remove the handicap of freight rate differentials now existing against the movement of Southern products into the markets of our Nation,"[28] they divided over the proper approach to such an end, as well as over the end itself. At Atlanta this division was clear in their effort to proceed in three directions at once—first, by the pursuit of class rate reductions, which the ICC was already considering; second, by reduction of commodity rates, by filing complaint with the ICC on specific evidence of discrimination;

[23] *Ibid.*

[24] Walter R. McDonald, *Transcript of Testimony,* p. 5113.

[25] Kentucky rejoined the Southern Governors Conference in 1945, having worked in the intervening time for the extension of Official Territory rates to her industrial centers. By choosing this goal, instead of supporting the parity campaign, she hoped to gain for herself the advantage held by northern shippers. Virginia, divided between the territories, took no official position in the controversy. Both she and West Virginia, as well as Maryland, joined the Governors Conference, however, after 1944, as the activities of the group broadened to include efforts of Southwide appeal not related to the rate campaign. *Class Rate Investigation,* p. 208. Southern Governors Conference, *Transcript of Proceedings at business meeting held at Admiral Semmes Hotel, Mobile, Alabama, July 20 and 21, 1945,* p. 3. *Proceedings of the Southern Governors Conference, New Orleans, Louisiana, December 7-8, 1945,* p. 1.

[26] Atlanta *Constitution,* May 11, 1937.

[27] *Ibid.*

[28] Bibb Graves, *Radio Address,* p. 1.

and third, an attempt at general uniformity by striking down at once the "artificial barriers in the whole rate structure."[29] Instead of a co-ordinated attack from all angles, as the above allocation of energies suggests, the effect of this scattering of the governors' effort was rather to jettison the "class" and the "general" campaigns. The dominant personality of the Atlanta meetings was Governor Graves,[30] Alabama's "Little Colonel," whose chief interest lay in securing lower rates for his state's fabricators of iron and steel products, such as cast-iron pipe fittings, fire-hydrant covers, stoves, and like articles.[31] It was at his suggestion that the ends of the Conference were divided,[32] and under his competent leadership the Commodities Case soon became the major vehicle for the Governors' fight. He experienced little difficulty in raising the necessary funds for his case—southern business men had contributed $40,000 within a month after the May meetings.[33] Long before supporters of class rate parity even won a hearing, the interests of Governor Graves and the "Birmingham crowd," as his group was labeled, were satisfied. When that time came, most of the industrialists who financed the Commodities Case opposed any change in the class rate structure.[34]

The Class Rate Case, put under the direction of Governor Gordon Browning, of Tennessee; Governor Clyde Hoey, of North Carolina; and Governor Olin Johnson, of South Carolina,[35] was dropped without a hearing. Although the ICC had already announced an investigation in *Docket 27655,* delay followed delay, and the case was ended by order of the Commission on April 11, 1938, after a request for such action by the Governors' committee, which concluded that "the time was not opportune for the presentation" of their case.[36] The vague "general" fight, described by Walter R. McDonald as an effort to settle everything at once "by main strength and awkwardness,"[37] was headed by Governor Rivers, with the

[29] Atlanta *Constitution,* May 11, 1937.
[30] Walter R. McDonald, *Transcript of Testimony,* p. 5114.
[31] "Freight Rate Battle; docket no. 28300, the ICC's hottest potato," *Fortune,* XXX (October, 1944), 153.
[32] *Ibid.*
[33] Atlanta *Constitution,* June 18, 1937.
[34] "Freight Rate Battle," *Fortune,* XXX (October, 1944), 153. In a letter to the author dated November 7, 1946, T. M. Henderson, prominent rate expert and former head of the Southern Traffic League, said:

"In the Commodity Rate Case the Southern carriers and shippers advocated the rates sought and the opposition was from the Northern and Eastern Carriers, shippers and manufacturers.

"In the Class Rate Case there was strenuous opposition by the Southern carriers and certain Southern shippers, as well as from Eastern carriers and shippers.

"The Southern shippers and manufacturers opposing an equalization in class rates were the same shippers and manufacturers who advocated and insisted on equal rates, mile for mile, on the commodities involved in the Commodity Rate Case."

[35] Atlanta *Constitution,* May 11, 1937.
[36] T. M. Henderson, *Transcript of Testimony,* p. 5020.
[37] Walter R. McDonald, *Transcript of Testimony,* p. 5113.

help of Governor White, of Mississippi, and Governor Leche, of Louisiana.[38] No progress was made until the hearings in the Commodities Case had ended, and the ICC on its own motion began in 1939 a general investigation.

Governor Graves, meanwhile, on May 26, 1937, filed complaint with the ICC charging discrimination in the freight charges of numerous manufactured and processed articles originating in the southern states and moving to Official markets. This case, the *State of Alabama Et Al. v. New York Central Railroad Company Et Al.*,[39] became celebrated as the "Southern Governors' Case," or the "Commodities Case." Widely publicized hearings at Birmingham in April, 1938, and at Buffalo in July, were finally followed by ICC decision in the case on November 22, 1939.[40]

Before the Commodities Case was pushed to a conclusion, however, rising clamor over discriminatory rates had drawn such general southern support to the Governors' position that the campaign for revision had become a vigorous sectional crusade. Public knowledge of the meaning and extent of the differentials was notably broadened with the publication in May, 1937, of a Tennessee Valley Authority study of the rate structure. Edited by J. Haden Alldredge, a transportation economist formerly with the Alabama Public Commission, the TVA Report, *The Interterritorial Freight Rate Problem of the United States*,[41] was published as a congressional document. Its clearly and graphically expressed conclusions transformed vague and querulous complaints against complex rate patterns to documented, logical arguments. By translation of the controversy from economics to English, the Alldredge Report opened to general public invasion a field formerly monopolized by traffic experts and rate specialists. Congressmen, shippers, columnists, and chamber-of-commerce speakers seized eagerly the simple tables and maps which gave adequate proof of the connection of the class rate structure to the future prosperity of the South. Although the findings and recommendations of the TVA economists became the center of considerable argument, their generally accurate presentation of the facts made every man an expert, and gave the South weapons without which a public campaign could not have been waged. The TVA entered the controversy by authority of its duty to report to Congress on programs designed to foster an "orderly and proper physical, economic, and social development" of the Tennessee Valley area.[42]

The survey showed that "the present territorial freight rate boundaries, which are the outgrowth of tradition, constitute barriers against the free

[38] Atlanta *Constitution*, May 11, 1937.
[39] *235 ICC 255.* Hereinafter cited as the *Southern Governors Case.*
[40] *Ibid.*
[41] *House Document 264*, 75 Cong., 1 Sess. (1937). Hereinafter cited as *First TVA Report.*
[42] *Ibid.*, p. iv.

flow of commerce which are hampering and restricting the normal development of the Nation as a whole by preventing a full utilization of the varied natural resources that exist in the different regions of the country."[43] Three possible solutions were suggested for the problem: (1) establishment of interterritorial rates on a "destination level" basis; (2) general revision which would bring the intraterritorial levels closer to each other, thus minimizing the differentials between territories; and (3) amendment of the Interstate Commerce Act in order to outlaw discriminations between regions and territories, and to make specific the ICC's duty to work for a "national" flow of commerce.[44] The third method was adopted by Congress in the Transportation Act of 1940.

The TVA Report, carrying the weight of an official government document, was in constant use in the following years. It was the basis of that section in the National Emergency Council's *Report on Economic Conditions of the South,* which stated that

> In effect, this difference in freight rates creates a manmade wall to replace the natural barrier long since overcome by modern railroad engineering. Both actual and potential southern manufacturers are hampeed because attractive markets are restricted by the existence of a barrier that is now completely artificial. The southern producer, attempting to build up a large-scale production on the decreasing cost principle, finds his goods barred from the wider markets in the Nation's most populous area. In marketing his products over the wall he is forced to absorb the differences in freight charges.[45]

This report to the President, presented on July 25, 1938, was the one which labeled the South the Nation's No. 1 economic problem.[46] Its references to freight charges drew new attention and serious study from the constantly growing number of amateur and professional critics of southern economic problems. Earlier, the President had given a sympathetic hearing to the Southern Governors in a meeting on the problem at Washington, January 7, 1938.[47] On August 5, WPA Administrator Harry Hopkins joined the group of national figures who had become authorities on southern rates. He declared in a nation-wide radio broadcast from Memphis that the "freight rate structure was planned to clinch the industrial supremacy of the North and East. . . ."[48] In September, Mrs. Roosevelt added a plea for revision.[49]

The southern congressmen, impatient that a year of litigation before the ICC in the Governors' Case showed no promise of early decision, served

[43] *Ibid.*
[44] *Ibid.,* pp. 65-66.
[45] National Emergency Council, *Report on Economic Conditions of the South* (Washington, 1938), p. 59.
[46] *Ibid.,* p. 1.
[47] Atlanta *Constitution,* January 7, 1938.
[48] *Railway Age,* CV (1938), 263.
[49] *Ibid.,* 386.

notice in June of 1938 that they intended to begin work for congressional elimination of the differentials. Representative Ramspeck informed the press on June 18 that he planned the organization of a Southern-Western bloc to push favorable legislation in the event of an unfavorable action, or further delay, by the ICC.[50] On June 13, Senator Claude Pepper, of Florida, had introduced a resolution requesting the ICC to report to the Senate a plan for the removal of the differentials.[51] Southerners generally intensified their agitation after the passage in 1938 of the minimum wages and hours law, which, according to Representative Ramspeck, meant that

> Eastern and New England members no longer in good faith can oppose our demands for equality in freight rates since they have won their demands for uniformity in wages. Every state in the union, except those in Official Territory, is discriminated against at present as to freight rates. A major part of the consuming market of the country lies in this favored area. The other states are laboring under a handicap in attempting to reach this vast market. It is for this reason that we heard so much talk of differentials in regard to wages and hours.[52]

When the 76th Congress convened in January, 1939, bills designed to achieve rate uniformity were immediately introduced by Senators Lister Hill, Alabama;[53] Kenneth McKellar,[54] Tennessee; William Bankhead,[55] Alabama; Representatives Robert Ramspeck,[56] Georgia; Joseph R. Bryson,[57] South Carolina; and E. C. Gathings,[58] Arkansas.

On January 20 the proposed Southern-Western bloc organized on both sides of Congress. Representative Ramspeck called for the 226 representatives from the South and West to meet with him on that date, but only 60 attended the session. This group chose Ramspeck chairman; Representative David Terry, Arkansas, vice-chairman; and Charles V. McLaughlin, Nebraska, secretary, of a committee to urge hearings before the House Committee on Interstate and Foreign Commerce.[59] Representative John Rankin, Mississippi, opposed this plan; he said that committee hearings would bury the complaint, and argued for a movement to block all railroad legislation until the southern problem was solved. The members refused to bind themselves in advance, however, to such a program. On the evening of January 20, fifty-odd senators, representatives, and other spokesmen for the southern states were entertained at a dinner by Law-

[50] Atlanta *Constitution*, June 20, 1938.
[51] *Congressional Record*, 75 Cong., 1 Sess., p. 8922.
[52] *Railway Age*, CIV (1938), 1059.
[53] Senate Joint Resolution 27 and Senate Bill 158, *Congressional Record*, 76 Cong., 1 Sess., pp. 67, 89.
[54] Senate Bill 126, *ibid.*, p. 66.
[55] Senate Bill 137, *ibid.*, p. 67.
[56] House Bill 188, *ibid.*, p. 28.
[57] House Bill 3369, *ibid.*, p. 965.
[58] House Bill 3749, *ibid.*, p. 1175.
[59] Atlanta *Constitution*, January 21, 1939.

rence W. "Chip" Robert.[60] Governor E. D. Rivers, Georgia, delivered the chief address, urging the group to maintain a united front until passage of favorable legislation.[61] On January 27, 75 members of the House group met again to complete plans for concerted action.[62] Representative Ramspeck later claimed that the total membership of the House bloc was 130, representing 26 states.[63]

This determination by southern and western congressmen to take definite action forced hearings for the first time on the various bills which since 1934 had advocated some change in the rate structure. The House Committee on Interstate and Foreign Commerce studied the regional discrimination problem from February 28 to March 3,[64] while a subcommittee of the Senate Committee on Interstate Commerce acted from February 27 to March 8.[65]

After the excursions and alarms of the preceding months, the net result of the House and Senate hearings appears very small indeed. A considerable portion of the testimony delivered by a parade of shippers, politicians, and traffic men was devoted to proof that rate-making is a complex art in which congressmen could not be initiated. The House heard sixteen witnesses from the South and West, and nine from the North; while the

[60] See *supra*, p. 21. Robert, Secretary of the Democratic National Committee and Executive Director of the Southern Governors Conference, drew criticism from northern Democrats, who charged him with using national party office to lobby for sectional legislation. He replied that both of his jobs were voluntary, non-paying efforts, and that he had no intention of abandoning a "23 year" campaign for elimination of rate discrimination. He added that he did not consider rate revision a "political" question. *Congressional Record*, 76 Cong., 1 Sess., *Appendix*, p. 712.

[61] Atlanta *Constitution*, January 20, 1939.

[62] *Ibid.*, January 28, 1939.

[63] *Freight Rate Discriminations, Hearings Before a Subcommittee of the Committee on Interstate Commerce, United States Senate, February 27-March 8, 1939*, 76 Cong., 1 Sess., p. 546. Hereinafter cited as *Senate Hearings*.

[64] *Omnibus Transportation Bill, Hearings Before the Committee on Interstate and Foreign Commerce, House of Representatives*, 76 Cong., 1 Sess., pp. 691-959. Hereinafter cited as *House Hearings*. Members of the House Committee were Clarence F. Lea, California, chairman; Robert Crosser, Ohio; Alfred L. Bulwinkle, North Carolina; Virgil Chapman, Kentucky; William P. Cole, Jr., Maryland; Edward A. Kelly, Illinois; John A. Martin, Colorado; Herron Pearson, Tennessee; Lyle H. Boren, Oklahoma; Martin J. Kennedy, New York; Elmer J. Ryan, Minnesota; Charles L. South, Texas; James P. McGranery, Pennsylvania; Donald L. O'Toole, New York; Luther Patrick, Alabama; Carl E. Mapes, Michigan; Charles A. Wolverton, New Jersey; James Wolfenden, Pennsylvania; Pehr G. Holmes, Massachusetts; B. Carroll Reece, Tennessee; James W. Wadsworth, New York; Charles A. Halleck, Indiana; Oscar Youngdahl, Minnesota; Carl Hinshaw, California; and Clarence J. Brown, Ohio.

[65] *Senate Hearings, passim.* On January 27, Senator Burton K. Wheeler, Montana, Chairman of the Senate Committee on Interstate Commerce, appointed a subcommittee of the full Senate group to hear charges of regional discrimination. Subcommittee members were Lister Hill, Alabama, chairman; Charles O. Andrews, Florida; Ernest Lundeen, Minnesota; Charles W. Tobey, New Hampshire; and Chan Gurney, South Dakota.

Senate subcommittee, sitting longer, heard thirty-nine western and southern witnesses, and the same nine Northerners.[66] Only one of the experts from the outlying territories urged passage of legislation such as the Ramspeck "destination" bill,[67] while the others advised Congress to confine its efforts, at most, to a suggestion that the Interstate Commerce Commission get busy, or conduct a general investigation. The dangers of a legislative "strait-jacket" on rates were extensively described, and the highest praise was given to the ability and fairmindedness of the Interstate Commerce Commissioners. In the House, the hearings were scarcely more than perfunctory, despite the presence on the Committee of Southerners who had been active in the agitation. On the third day of the meetings, Representative Halleck remarked that "Of course, since the hearings started it has become apparent that no real effort is being made to bring about the passage of any of the bills pending before us. . . ."[68] Representative Bulwinkle added that "so far as affecting any member of the committee, the minds of the committee from all sections, practically, are made up now, and there will be nothing done about it so far as this committee is concerned."[69] These comments were made after witnesses from the South and West only had appeared, and before testimony was taken from Official Territory experts. When Harry C. Ames, counsel for the New England Governors' Freight Rate Conference, appeared, he said:

> I had quite a speech prepared, but in view of Congressman Bulwinkle's early statement this morning, I am afraid I might be in the position of the young lawyer who was arguing away and the judge told him to continue his argument, that in spite of it he was still with him.[70]

The extent of the Committee's effort was indicated by a remark of Ernest O. Thompson, of the Texas Railroad Commission, who told the group "we might as well be frank about it. If the Congress is aroused, and we just kind of let the Interstate Commerce Commission know that they are back of them, we can get a lot of things done that we could not get if no one was interested in it."[71] In the Senate Subcommittee hearings, a more earnest effort was made to seek out a solution, but the results were substantially the same.[72]

With more ground lost than gained in these sessions, Southerners had a difficult task in keeping the Westerners in line long enough to pass some type of resoltuion embodying the southern stand. The threat of destination rates—which would fix entirely different and unrelated charges on the same article for movement in opposite directions over the same track—had

[66] *Senate Hearings,* and *House Hearings, passim.*
[67] J. C. Murray, testimony in *House Hearings,* pp. 693-722.
[68] *House Hearings,* p. 851.
[69] *Ibid.,* p. 855.
[70] *Ibid.,* p. 885.
[71] *Ibid.,* p. 801.
[72] *Senate Hearings, passim.*

alarmed congressmen from the West, whose chief interest lay in the protection of their low commodity rates.[73] Representative Ramspeck served notice March 7 that the South had not abandoned the fight, and threatened a southern filibuster unless Congress included some relief in the general railroad legislation which was scheduled for passage that session. By this time he and Senator Hill, who had headed the Senate Subcommittee, were working together to draft a bill which would let the Commission know the general attitude of Congress, yet which would not interfere with the flexible powers of the Commission as it was established.[74]

Evidence, perhaps, that the time of Congress had not been entirely wasted was exhibited in a sudden bustle of activity by the ICC while both the House and Senate Committees were hearing testimony. The ICC examiners, in a proposed report on the Southern Governors Case, were extremely favorable to the southern position, and recommended relief for the South on a number of commodities on which complaint had been made.[75]

The final outcome of the southern and western proposals of 1939 lay in the inclusion of Senator Hill's Senate Joint Resolution 99, and Representative Ramspeck's identical House Joint Resolution 223 in the railway legislation which eventually emerged from the 76th Congress. These directed the ICC to conduct an investigation into rates within and between the territories; and added the words *region, district,* and *territory* to the grouping of persons and places protected from discrimination by the Interstate Commerce Act.[76] These provisions were embodied in the Wheeler-Truman Bill, S2009, which was introduced in the Senate on March 30, 1939.[77]

The resignation with which the Commerce committees had left the rate problem was shared to a considerable degree by the houses themselves, although Senator Tom Connally, Texas, spoke for many when he protested the innocuous action proposed by the new bill, and declared, "I had hoped the committee would give to the Commission a modest command to do something after they find the facts, because there is no doubt on earth that many areas, particularly in the great Southwest, from which I come, are suffering greatly from rates out of our territory. . . ."[78] Senator Wheeler confessed that "the western section of our country has not been so aggressive, in my judgment, as it ought to have been, with reference to discrimination on account of freight rates. Of course the West enjoys many commodity rates, and because of them has not fought class rate discriminations as vigorously as it might have. . . ."[79] Senator Wheeler explained the addi-

[73] Atlanta *Constitution,* March 7, 1939.
[74] *Ibid.*
[75] *Railway Age,* CVI (1939), 389.
[76] *Congressional Record,* 76 Cong., 1 Sess., p. 5571.
[77] *Ibid.,* p. 3509.
[78] *Ibid.,* p. 5888.
[79] *Ibid.*

tion of *region, district,* and *territory* to the areas against which discrimination was forbidden, and the proposed investigation, to the complete satisfaction of cautious Official Territory congressmen. "This provision does not broaden the authority of the Interstate Commerce Commission in the slightest degree," he said. "It simply says that they shall carry on an investigation into these various territorial rates."[80]

Both features were approved in the Senate version of the bill on May 23, 1939, under application of unanimous consent rules. No opposition was offered by Senators from any section.[81] The Interstate Commerce Commission did not escape these debates unscathed, however; the temper of the southern and western Senators was shown by Senator John E. Miller, of Arkansas, who expressed his disgust at leaving "all discretion with the . . . Commission, when it has deliberately built up a system of freight rates which saps our territory of its raw products and prevents us from shipping into the same territory manufactured goods in competition."[82]

Senate Bill 2009, making major changes in the regulation of the nation's transport agencies, passed the Senate on May 25,[83] and was referred to the House Committee on Interstate and Foreign Commerce on May 31.[84] After substitution of a House bill—which embodied the same anti-differential features as the Senate bill—the representatives debated the measure from July 21-26.[85] Representative Bulwinkle answered protests against the softness of the measure by declaring that all the southern and western experts asked was "a pointed stick to prod the Interstate Commerce Commission with. . . ."[86] Opposition to the bill was based largely on the effort of the nation's water carriers to avoid regulation by the ICC, and some waterways spokesmen attempted to use the differential freight rate issue as a means for defeating the entire program. Representative Lindsay C. Warren, of North Carolina, warned that

> Members know what an investigation by the Interstate Commerce Commission is. Years and years have they already had the authority to make that investigation without anything being inserted in this present bill. Do not let me hear anyone who attended those meetings from Tennessee and Georgia and Texas and Louisiana, Arizona, New Mexico, and southern California protesting against that discrimination if they should decide to vote for this measure. Do not let me ever hear them stand up and whimper about the discriminations existing against those sections today. . . . Go back and tell the people of those sections, if you do, that under pressure of a great lobby you could not resist, and voted to take away from them the very last thing they had to hold down freight rates in those sections [water competition].[87]

The House version of S2009 passed on July 26, 1939, and conference committees were appointed during the closing days of the month to iron out

[80] *Ibid.*, p. 5984.
[81] *Ibid.*, p. 5985.
[82] *Ibid.*, p. 6071.
[83] *Ibid.*, p. 6158.
[84] *Ibid.*, p. 6465.
[85] *Ibid.*, pp. 9698-10127, *passim.*
[86] *Ibid.*, p. 9873.
[87] *Ibid.*, pp. 9700-9701.

the differences. Their first report was submitted on April 26, 1940,[88] during the third session of the 76th Congress. The bill's passage through both houses was completed on September 9, 1940,[89] and it received the President's signature on September 18.[90] The Wheeler-Truman Bill, or the "Transportation Act of 1940," as it was titled, represented the last serious consideration given by the whole Congress to the freight rate problem. Since its passage no bill looking to revision of the interterritorial rate structure has been given a hearing. The ease with which the above-mentioned changes slid through Congress seems to be explained chiefly by the fact that those interests profiting by the differential structure hoped thereby to head off any measures which would have interfered with the ICC's full authority in rate matters.[91]

The effectiveness of the congressmen's "pointed stick" was illustrated before that weapon could be employed for official prodding. On July 29, 1939, while conference committees were being appointed for consideration of S2009, the ICC instituted on its own motion the far-reaching *Class Rate Investigation, Docket 28300 and 28310.*[92] Slightly less extensive than the investigation proposed by the national legislators, the survey thus begun was still the most extensive in the Commission's history, looking to a study of all class rates east of the Rocky Mountains. Whether this investigation was a result of the pressure politics described, or whether the commissioners grew suddenly curious about the overall rate structure, it nevertheless gave opportunity for a full hearing of the South's grievances, and became the instrument by which the greatest southern gains have been achieved. The Commission also delivered on November 22[93] a report favorable to the complainants in the Southern Governors Case, thus clearing the slate for the general revisions which were to follow.

Southerners were able to look to other sources, too, for indications of progress in their effort. A second TVA report to Congress in 1939, entitled *Supplementary Phases of the Interterritorial Freight Rate Problem of the United States,*[94] indicated that certain Canadian goods might move into Official markets at lower rates than corresponding goods from the South—a study which added further authority to the arguments for change. Also, on February 9, 1939, President Roosevelt appointed J. Haden Alldredge, the economist who edited both of the TVA Reports, to

[88] *Ibid.*, 76 Cong., 3 Sess., pp. 5156, 11269.
[89] *Ibid.*, p. 11766.
[90] *Ibid.*, p. 12290.
[91] Robert W. Harbeson, "The Transportation Act of 1940," *The Journal of Land and Public Utility Economics,* XVII (1941), 293.
[92] *262 ICC 447.* Herein cited as *Class Rate Investigation.*
[93] *Southern Governors Case,* p. 255.
[94] *House Document 271,* 76 Cong., 1 Sess. (1939). Hereinafter cited as *Second TVA Report.*

membership on the ICC.[95] After his confirmation by the Senate on April 24,[96] critics of the rate structure waited hopefully for more rapid progress and purposeful action than had heretofore characterized the Commission's ponderous movements.[97] Although Alldredge did not participate in the *Southern Governors Case* decision, his influence in the *Class Rate Investigation* was perhaps decisive in the eventual conclusion of that survey.[98] The decade turned with the South elated over 1939's most notable sign of progress, the ICC's favorable decision on the Governors' complaints.

[95] *Railway Age,* CVI (1939), 279.
[96] *Ibid.,* 752.
[97] *Congressional Record,* 76 Cong., 1 Sess., p. 5889.
[98] See report of J. V. Norman, counsel for the Southern Governors, to the Southern Governors Conference, *Transcript of Proceedings at business meeting held at Admiral Semmes Hotel, Mobile, Alabama, July 20 and 21, 1945,* p. 18.

CHAPTER III

THE SOUTHERN GOVERNORS CASE

Considering the thumping sectional tom-toms and the anguished northern howls which accompanied hearings in the *Southern Governors Case,* the list of actual complaints heard is surprisingly short. Governor Graves filed his May 26, 1937,[1] petition without consultation with southern industrial interests, and then began his effort to seek the funds and the evidence with which his charges could be supported.[2] By the time the Birmingham hearings in the case were held, the scores of commodities listed in the initial complaint had been whittled down to fourteen groups. The Governors' committee had found, after making its protests, that many of the manufacturers whose defense it had assumed already had favorable commodity rates. The three most important groups of articles named—paper, textiles, and furniture—had to be withdrawn from the complaint on the insistence of the shippers who felt, apparently, that any grievance they had might be lost in the shuffle of so general a case.[3] Not listed were such

[1] *ICC Docket 27666, The State of Alabama Et Al. v. The New York Central Railroad Company Et. Al., Complaint* (May 26, 1937). Hereinafter cited as *Southern Governors Case, Complaint.*

[2] Walter R. McDonald, *Transcript of Testimony,* p. 5114.

[3] Arthur J. Ribe, *Proceedings, Southern Transportation Conference* (Birmingham, December 10, 1941), p. 57. The commodities listed in the original complaint, to which many were later added, and others withdrawn, included fifty-three items in eight groups. They were: (1) Fibre products: rayon, cotton factory products; yarn; bags and bagging, burlap; cordage, manilla and sisal, rope and twine; dry goods, knit goods, and hosiery; (2) Quarry products: marble; granite; limestone and stone, cast or natural; soapstone and talc; asphaltic stone; zinc and zinc concentrates; clay (ball, wad, sagger, Kaolin), pulverized limestone, Fuller's earth, and barytes; (3) Chemical products: acids, acetic, insecticides, alkalies, dyes, paints; fertilizer materials, phosphoric rock, and plant foods; beverages; alcohol, denatured or methanol; (4) Ceramic products: chinaware; porcelain ware; pottery; brick and tile; (5) Miscellaneous manufactures: furniture; automobile tires; builtup wood and veneer products; stoves, ranges, house heating furnaces, and related articles; plumber's goods; agricultural implements; automobile parts; handles, broom or mop; board, plaster and gypsum, and related articles; (6) Metallurgical products: glassware; glass bottles, jars, and glasses; flat and plate ware; interior building glass, such as glass brick and glass tile; metal alloys of all kinds, such as stainless steel, brass and bronze articles, aluminum products, etc.; chromium and manganese alloys; electro-plating industrial products, such as silverware, plumbing fixtures, automobile parts, etc.; (7) Processed articles: canned goods; molasses and syrup; tung and other oils useful in industrial processes; (8) Miscellaneous commodities: abrasives, aluminous flour or grain; phosphate of ammonia; wood charcoal; sulphate of copper; cotton factory products; green salted hides; insulating material; leather; phosphate of sodium; dairy products, milk, butter, cheese, etc.; wheel barrows and trucks; aluminum; bark and tanning extract. *Southern Governors Case, Complaint,* pp. 17-19.

important southern products as manufactured tobacco and cigarettes, coke, coal, cast iron pipe, lumber, iron and steel, and aluminum.[4]

Testimony alleged discrimination against certain important articles in interterritorial traffic—including stoves, pipe fittings, plumber's goods, and stone[5]—but less than twenty actual producers came personally to support the Governors' complaint, while the North and East sent over a hundred representatives to the initial hearings at Birmingham to fight the case.[6] Arthur J. Ribe, commercial traffic agent who was employed by the Governors to assist in the case, described some of the southern difficulties as follows:

> After the commodity complaint was filed, the greatest difficulty we . . . had was to find Southern shippers who were hurt, or if they were hurt, to come to the hearing and testify. Indeed, we almost ran out of witnesses on the first or second day. Dr. Whitman, from the University of Alabama, had to be rushed to the stand not fully prepared and without full consultation with our attorneys. Dr. Whitman was one of our best witnesses, but I am told that he made out his case for the South on cross-examination. I say "I am told" because I did not hear Dr. Whitman. While he was testifying, I had to hang onto the long-distance telephone exhorting the witnesses to come to Birmingham. . . .
>
> We ran into cases where the manufacturers were bitterly complaining, but who, on investigation, were found not to be hurt by rate discrimination. I will give you one illustration, but will not name the commodity or shipping point, as I do not want to get this shipper's rate raised. The shipping point is in Alabama, the destination is an eastern port city, and the movement amounts to about 100 cars annually, and is via rail and water. Upon investigation, we found that the rate the shipper was paying was 60c per ton lower than the northern level for the same distance and also that his competition was nearby manufacturers in New Jersey serving the particular destination by truck.[7]

Evidence in support of the Governors' contentions fell in three broad divisions—facts on the actual movements and competitive conditions encountered by the articles named, statistics on southern resources and economic development, and data on the comparative costs of delivering transportation service in the North and South.[8] Some of the facts developed in arguments on the fourteen commodity groups are considered in the following pages.

[4] E. R. Oliver, *Southern Freight Differentials and Their Effect upon Southern Industry*, speech to the Institute of Citizenship sponsored by Agnes Scott College, Emory University, and the Georgia School of Technology (Atlanta, February 15, 1939), p. 5.

[5] *Southern Governors Case*, pp. 349-350.

[6] J. J. Doran, head of the Atlanta Freight Bureau, quoted by E. R. Oliver, *Southern Freight Rates and Their Relationship to Southern Industry*, speech to the Birmingham Kiwanis Club (April 23, 1943), p. 5.

[7] Arthur J. Ribe, *Proceedings, Southern Transportation Conference* (Birmingham, December 10, 1941), p. 57.

[8] *Southern Governors Case*, p. 258.

An exhibit illustrating the condition of thirty stove and furnace manufacturers in the South[9] showed their operation under a "distinct disadvantage"[10] as a result of the rate structure. A comparison of Official and Southern Territory scales, Table VI, indicates the first class rates, and the rates on various types of cooking and heating equipment, for impor-

TABLE VI

COMPARISON OF RATES IN EFFECT DURING HEARINGS OF THE SOUTHERN GOVERNORS CASE FROM SOUTHERN AND NORTHERN POINTS TO NORTHERN DESTINATIONS (CENTS PER 100 POUNDS). SOURCE: *Southern Governors Case*, p. 272

From	To	Distance (miles)	First Class Rate			Rates on Coal Stoves				Rates on Gas Stoves		
			As published	Under Southern Scale	Under Northern Scale	Minimum CL 24,000 lbs.	Minimum CL 10,000 lbs.	LCL Except Furnaces	LCL Furnaces	Minimum CL 20,000 lbs.	Minimum CL 16,000 lbs.	LCL
Chattanooga....	Cincinnati..	338	143	143	101	50	67	82	82	57	x	103
Erie, Pa.....	Cincinnati..	335	101	143	101	35	x	71	58	x	51	86
Gadsden, Ala....	Evansville..	384	156	156	109	55	73	89	89	62	x	112
Holland, Mich...	Evansville..	380	106	152	106	37	x	74	60	x	53	90
Gadsden.....	Columbus..	546	184	183	130	59	86	105	105	74	85	132
Philadelphia....	Columbus..	540	127	179	128	44	x	89	72	x	64	108
Nashville.....	Pittsburgh..	605	178	193	138	56	84	101	101	71	80	128
Taunton, Mass..	Pittsburgh..	634	139	196	141	49	x	97	79	x	70	118
Gadsden.....	Chicago....	669	200	202	145	63	94	114	114	80	90	144
Utica, N. Y.....	Chicago....	706	142	209	151	50	x	99	81	x	71	121
Nashville.....	Buffalo.....	719	195	209	151	62	92	111	111	78	88	140
St. Louis.....	Buffalo.....	703	147	209	151	51	x	103	84	x	74	125
Birmingham....	Detroit.....	737	213	212	153	67	100	121	121	85	96	153
Taunton.....	Detroit.....	743	143	216	155	50	x	100	82	x	72	122
Birmingham....	Baltimore..	798	221	222	160	72	104	126	126	88	103	159
Joliet.....	Baltimore..	791	154	222	160	54	x	108	88	x	77	131
Birmingham....	New York..	988	237	249	182	76	111	135	135	95	108	171
Rockford, Ill....	New York..	977	176	249	182	62	x	123	100	x	88	150
Gadsden.....	Boston.....	1148	245	268	198	77	115	140	140	98	110	176
Mt. Vernon, Ill..	Boston.....	1166	187	272	201	65	x	131	107	x	94	159

[9] *Ibid.*, p. 268, *infra.* Stoves, furnaces, etc., are made at Gadsden, Bridgeport, Sheffield, Florence, and Birmingham, Alabama; Knoxville, Nashville, Athens, Chattanooga, Cleveland, Rockwood, South Pittsburg, Franklin, and Lewisburg, Tennessee; Atlanta, Columbus, and Rome, Georgia; and at Greensboro, North Carolina.

[10] *Ibid.*, p. 276.

tant origins and destinations in this traffic. Despite these higher transportation charges, however, southern stove manufacturers were competing successfully in the North, forcing competitors there to cut rates even in their immediate plant areas.[11]

Similar conditions prevailed in the sale of southern stone to the Official markets. "The situation with respect to stone," the ICC said, "is similar to that previously referred to in the discussion relating to stoves, in that to the extent to which southern stone is sold in the North it largely displaces the product of producers therein. The fact that it is sold in the North obviously is due to the ability of southern producers in one way or another to absorb the differences in rate levels."[12]

Approximately 70 per cent of national consumption and 80 per cent of the production of enameled iron and steel plumber's goods is in the North, yet testimony showed that the Crane Enamelware Company, of Chattanooga, sold 47 per cent of its output there in 1937.[13] The carload rate differentials being absorbed by the Chattanooga concern are illustrated in Table VII.

TABLE VII

Rates on Plumber's Goods for Origins and Destinations in the North and South

From	*To*	*Miles*	*Rate*
Chattanooga	Cincinnati	338	51
Sheboygan	Toledo	324	42
Chattanooga	Dayton	398	56
Sheboygan	Dayton	390	44
Chattanooga	Toledo	535	64
Mansfield	Camden	537	49
Chattanooga	Boston	1074	83
Sheboygan	Boston	1112	68

Source: *Southern Governors Case*, p. 285.

Although the South produces olny 10 per cent or less of the nation's cast-iron pipe fittings, cast-iron service boxes, iron-body valves, fire hydrants, brass pipe fittings, and brass cocks or valves, it is able to compete in the eastern part of Official Territory—by rail-water and truck routes—with northern producers. An Anniston, Alabama, manufacturer declared, however, that except by the routes named Official markets are closed by high rates.[14]

No evidence of competitive situations was given on the movement of cast-iron hollow ware and fireplace fixtures.[15] In the case of conduit

[11] *Ibid.*, p. 275. [12] *Ibid.*, p. 284. [13] *Ibid.*, p. 286.
[14] *Ibid.*, p. 290. [15] *Ibid.*

outlet boxes, junction boxes, switch boxes, and outlet plates, the quality of the products and the reputation of the manufacturer control sales, rather than prices.[16]

Rate differentials on boots and shoes did not prevent a Nashville shipper from selling 40 per cent of his output in the North. He also showed sales throughout the nation, as well as in 18 foreign countries. Of these shipments, 40 per cent were moving by the railroads.[17] Some illustration of the differential being absorbed is shown by the fact that the average carload rates from Atlanta to thirty representative northern cities, an average distance of 741 miles, was $1.56 per hundred pounds, in contrast to the northern scale of $1.18 per hundred pounds for a like distance.[18]

A Basic, Mississippi, excelsior producer loaded only 150 carloads in 1937, despite a plant capacity of 600 carloads. He told the Commission that 60 per cent of his product once went to points in Indiana, Ohio, Illinois, and to St. Louis, until he was forced out by northern competition. Except for a low commodity rate for his traffic to Cincinnati, a Woodland, Georgia, excelsior manufacturer found rates too high to sell profitably in the North.[19]

A price difference of twenty-five cents per ton was enough, a Chatsworth, Georgia, talc producer said, to swing a sale in Official Territory to his northern competitors.[20] He had been joined by the southern carriers in earlier efforts to reduce to the northern level interterritorial rates on talc and soapstone, but the Official roads had persisted in publishing higher schedules.[21]

A Hartsville, South Carolina, manufacturer of paper articles—cones, cores, tubes, etc.—holds a virtual monopoly by means of patent rights on his machinery, and meets 80 per cent of the nation's demand for these articles. His northern competitors must hold a license from his company to operate. Despite this fact, according to the testimony, much of the traffic out of Hartsville has been diverted to trucks, because rail rates make it unable to meet the northern competition.[22] In the sale of fine boxed stationery, an Atlanta manufacturer said that sales outside the South in 1937 required the company to make freight allowances to department stores totaling $55,000. In that year papeteries constituted 60 per cent of his $1,600,000 sales, the remainder going to cheap school tablets. The result has been a decline of the former, more profitable, production.[23]

The only evidence on drugs and medicines produced in the South was given by two Atlanta manufacturers, one of cosmetics and the other of a patent medicine. The former testified that high charges on his raw materials—secured mostly from Pennylvania—as well as on his finished goods,

[16] *Ibid.*, p. 293.
[17] *Ibid.*, p. 294.
[18] *Ibid.*
[19] *Ibid.*, pp. 295-296.
[20] *Ibid.*, p. 298.
[21] *Ibid.*, p. 297.
[22] *Ibid.*, p. 300.
[23] *Ibid.*, pp. 300-301.

has forced him to think of moving his plant to Marion, Indiana, despite the fact that his chief markets are in the South. The medicine shipper wanted lower freight rates so that a more substantial sum would be available for his advertising costs.[24]

It was also an Atlanta shipper who argued for lower rates on metal furniture, the Georgia city being the only one in the South, at the time of the Governors Case, in which such products were made. No evidence of competition with Official manufacturers was shown, however.[25] Such was also the case with canned oysters and shrimp, on which New Orleans producers enjoyed favorable rates to all points except the very center of Official Territory.[26] Similar conditions prevailed for New Orleans shippers of cordage and binder twine.

The final commodity on which the ICC reported was chinaware, but no testimony concerning actual shipments was given. A representative of a plant under construction at Gordon, Georgia, stated that study of the rate schedules indicated that the plant, when producing, would be unable to sell in the North.[27]

To such evidence illustrating the actual rate handicap of a southern producer competing in the northern market, the Governors added government statistics on the prosperity and industrialization of the North and South, and attempted to prove that the cost of transporting freight was actually lower in the South than in the North.[28]

Governor Bibb Graves, who continued in the direction of the Governors Case after the expiration of his term of office in 1938, summed up the South's position with a plea for parity. "In this case," he said,

> we present to the Commission the question of the right of all people of the eight Southeastern states to have full and fair opportunity to participate in commerce of the entire nation, the question of the right of all people in Official Territory to purchase products of other sections of the United States in a nation-wide market on the basis of free and fair competition, and the question of whether these states shall be given fair and impartial treatment by this system of rail transportation which the Supreme Court and the ICC have said now constitutes a national system.[29]

Such perorations as this served chiefly for public consumption, and for the influence they might have on future action by the ICC. Decision as to whether unjust discrimination existed against the commodities named in the complaint did not hinge on so general a position, and the relief won in the Governors Case did not alter the overall rate structure of any territory.

[24] *Ibid.*, pp. 302-303.
[25] *Ibid.*, pp. 303-304.
[26] *Ibid.*, pp. 304-305.
[27] *Ibid.*, pp. 305-306.
[28] *Ibid.*, p. 307.
[29] *Railway Age*, CIV (1938), 718. See also *Southern Governors Case*, pp. 333-334.

TABLE VIII

DEVELOPMENT OF INDUSTRIES PRODUCING ARTICLES NAMED IN COMPLAINT DURING SELECTED YEARS

Product, area, and year	Number of establishments	Number of wage earners	Wages paid (thousands)	Value of products (thousands)
Stoves and ranges (not electric) and warm air furnaces				
South, 1923	27	2,770	$ 2,906	$ 9,120
South, 1935	32	5,579	4,257	15,270
United States, 1923	588	49,812	68,331	268,262
United States, 1935	559	41,739	44,222	188,614
Stone				
South, 1927	143	5,418	$ 6,072	$ 19,426
South, 1935	119	2,597	1,919	6,594
United States, 1927	1,978	40,474	68,490	201,181
United States, 1935	1,404	15,224	16,192	56,478
Boots and shoes (other than rubber)				
South, 1927	5	1,772	$ 1,239	$ 8,682
South, 1935	8	3,169	2,390	13,512
United States, 1927	1,357	203,110	225,090	944,714
United States, 1935	1,024	202,113	171,348	643,872
Metal and wood furniture				
South, 1927	219	20,483	$ 16,899	$ 71,677
South, 1935	180	17,713	11,976	43,828
United States, 1927	3,222	186,302	236,109	879,706
United States, 1935	3,035	130,781	113,898	434,443
Canned fruits, vegetables				
South, 1927	106	2,418	$ 971	$ 7,934
South, 1935	153	6,408	2,870	21,380
United States, 1927	2,436	80,924	62,309	572,345
United States, 1935	2,744	116,298	70,612	649,644

SOURCE: *Southern Governors Case*, pp. 263-264.

In their general argument, the Governors attempted to prove that the existing rate structure burdened the free movement of goods between the territories, and that the public interest in both sections—the major consideration of a public regulatory body—was thus injured. They denied any hope of influencing the migration of industry from one section to another by a favorable ICC decision, claiming merely that they wanted the South to stand or fall on its own natural advantages and disadvantages. The blame for the alleged artificiality of the rate patterns they placed at the door of the northern railroads, whose control of the Official Territory lines prevented the southern roads—on whose support the governors heavily relied—from installing lower through rates. The Governors argued further that since the South is a lower cost territory than the

North—a point most vigorously denied by all the carriers—and that since the northern roads delivered the same service to Official shippers that they gave to the Southerners, rate disparities were entirely unreasonable. Appeals by the opposition to ICC precedent were discounted by the contention that the earlier guiding decisions were based on mistaken assumptions, and on conditions which no longer existed. They gave ample evidence of disparities in the freight charges, and declared that a mere showing of such differences put the burden of justification on the defendant roads.[30]

Southern industrial organizations supported, in general, the Governors' position. The Southern States Industrial Council, a sectional version of the National Association of Manufacturers, recorded the view that unless higher rates were shown to be necessary for the support of the southern railroads, then such higher rates were unjustified. This organization, in which there was considerable railroad influence,[31] reflected throughout the controversy the position of the roads themselves.[32] The attitude of the region's heavy loading commodity shippers was expressed later by Alvin W. Vogtle, vice-president of a Birmingham coal company, who stated that the case was on "sound grounds, as a rate matter," and said it had

> general sympathy in the South, including the active support of our railroads in the South. It was predicated on principles according with the Southern freight rate system. It involved but a limited number of commodities, indicating that there was very little dissatisfaction with the Southern freight rate structure. This case did not have any tendency to involve Southern freight rates generally.[33]

Other commodity shippers who endorsed formally the Governors' effort included the New Orleans Joint Traffic Bureau,[34] and the Southeast Shippers' Advisory Board.[35]

[30] *Ibid.*, pp. 308-312.
[31] *Senate Hearings,* pp. 383-384.
[32] *Southern Governors Case,* p. 312.
[33] Alvin Vogtle, *Proceedings, Southern Transportation Conference* (Birmingham, December 10, 1941), p. 23.
[34] *Southern Governors Case,* p. 312.
[35] *Railway Age,* CIII (1937), 468. In these organizations, and in the earlier mentioned Southern Traffic League, most shippers of the South were represented. The concerns which gave evidence at the Governors Case hearings, either through their personal representative or through commercial traffic agents, were the Jacobs Manufacturing Company, Bridgeport, Alabama; Hardwick Stove Company, Cleveland, Tennessee; Dixie Foundry Company, Cleveland, Tennessee; Dortch Stove Works, Franklin, Tennessee; Knox Stove Works, Knoxville, Tennessee; Agricola Furnace Company, Gadsden, Alabama; Chattanooga Implement and Manufacturing Company, Boyce, Tennessee; Cahill Company, Chattanooga, Tennessee; Southern Granite Quarriers and Manufacturers Association, Elberton, Georgia; Georgia Granite Corporation, Elberton, Georgia; Allen Granite Company, Elberton, Georgia; North Carolina Granite Corporation, Mount Airy, North Carolina; Georgia Marble Company, Tate, Georgia; Rockwood-Alabama Stone Company, Russellville and Rockwood, Alabama; Crane Enamelware Company, Chattanooga, Tennessee; M & H Valve and Fitting Company,

The southern railroads themselves were generally sympathetic with the objectives of the complainants, stating that they had long worked for the lower rates sought, an effort whose failure they attributed to the opposition of the northern carriers.[36] Governor Graves had counted on the region's carriers for help in the organization and prosecution of his case, because "lower interterritorial rates will mean increased business to the roads."[37] The rail interests took the position that each commodity should be judged on its own merits, without any attempt to set up a fixed rule for interterritorial adujstments.[38] Vice-President E. R. Oliver, of the Southern Railway System, had much earlier denounced the Official carrier effort "to build a rate wall at the Ohio and Potomac Rivers which will greatly curtail the movement of southern products into Official Territory."[39] The roads vigorously protested those estimates, however, which had indicated that the cost of service in the North was approximately 105.7 per cent of that in the South. When the Commission reached its decision, the southern roads took no exception to the proposed report except in this particular—and here expressed regret for their action "inasmuch as they are in accord with the ultimate . . . findings."[40]

This support to the Governors by railroad and heavy-commodity shippers scarcely supports the frequently voiced contention that the stunted southern limb of the American industrial body cannot give a wriggle without orders from a greedly northeastern brain. Whatever the merit in such charges, the hearings in the Governors Case give no evidence of their validity. Division over these issues was rather on straight sectional lines, with the state officials and industrial interests of Official Territory opposing the similar groups in Southern Territory.

It was this active northern defense, in fact, which lent greater importance to the case than would otherwise have been developed with so limited a complaint. Soon after the Southern Governors organized at Atlanta, there were signs of a general call to arms in the North. The six New

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Anniston, Alabama; Lee Brothers Foundry Company, Anniston, Alabama; Lodge Manufacturing Company, South Pittsburg, Tennessee; Walker Electric Company, Atlanta, Georgia; General Shoe Corporation, Nashville, Tennessee, and Atlanta, Georgia; R. O. Perrin, Basic, Mississippi; J. H. Woodall, Woodland, Georgia; Southern Talc Company, Chatsworth, Georgia; Georgia Talc Company, Chatsworth, Georgia, and Marshall, North Carolina; Cohutta Talc Company, Chatsworth, Georgia; Thompson, Weinman & Company, Cartersville, Georgia; Blue Ridge Talc Company, Henry, Virginia; Sonoco Products Company, Hartsville, South Carolina; Montag Brothers, Atlanta, Georgia; Dolly Dimple Laboratory, Atlanta, Georgia; S.S.S. Company, Atlanta, Georgia; and the Cherokee China Company, Gordon, Georgia. *Southern Governors Case,* pp. 349-350.

[36] *Southern Governors Case,* pp. 312-313.

[37] Atlanta *Constitution,* May 11, 1937.

[38] *Southern Governors Case,* p. 313.

[39] Quoted by Frank L. Barton, "The Freight Rate Structure and the Distribution of Defense Contracts," *The Southern Economic Journal,* IX (1942), 124.

[40] *Southern Governors Case,* p. 314.

England Governors, scenting danger to their section in the rising protests of the South, conferred at Boston on September 24, 1937, and agreed to oppose changes in the freight rate structure.[41] On October 25, shippers of the Central Freight Asociation, the western district of Official Territory, met at Chicago to denounce "political intrigue" in rate-making, and to organize a defense committee for opposition to the Southern Governors. Conferences with the northern carriers followed, and a North-wide meeting saw joint action planned by the two groups on October 29 at New York.[42] The New York State Chamber of Commerce on December 2 expressed its opposition to the southern attempt to make the ICC a "football of politics," and resolved that "the present freight rate structure is the result of slow evolution extending over many years. To make sudden material changes in this structure may lead to drastic and disturbing results."[43] On January 14, 1938, representatives of Maryland, Delaware, Pennsylvania, and New Jersey met in the offices of Attorney-General J. J. Bennett, New York, after a call for organization by Governor Herbert H. Lehman. The five states agreed to present a united front against the Southern Governors.[44] A year later the North was still busily organizing, with the formation of the Central States Governors Industrial Council at Chicago on March 30, 1939, to oppose southeastern demands, and to promote and protect "our own interests." The governors of Illinois, Indiana, Ohio, Michigan, and Wisconsin were represented.[45] State legislatures, North and South, began grinding out memorials and resolutions in support of their positions, and circulating them to the ICC, to Congress, to the President, and to anyone else whose influence was worth winning.[46] One observer estimated that the northern industries raised $600,000 to fight the case, while the contribution of southern industry for its prosecution was less than $50,000.[47]

These public bodies of the North denied the charge that the southern goods named in the Governors' complaint could not move freely into Official markets, and cited testimony which proved successful southern competition in the North. They further argued that the South has a natural advantage in low production costs, and declared that freight rate disparities were a natural disadvantage required by higher southern transportation costs. In support of the latter contention, they pointed to the fact that in the division of revenue from joint hauls, the southern roads received a larger share

[41] New York *Times,* September 26, 1937.
[42] *Railway Age,* CIII (1937), 618.
[43] *Ibid.,* 811.
[44] *Ibid.,* CIV (1938), 210.
[45] *Ibid.,* CVI (1939), 625.
[46] See *Congressional Record,* 76 Cong., 1 Sess., pp. 1144, 2119, 5482; and *Appendix,* pp. 739, 1159.
[47] J. J. Doran, former head of the Atlanta Freight Bureau, quoted by E. R. Oliver, *Southern Freight Rates and Their Relation to Southern Industry,* speech to the Birmingham Kiwanis Club (September 19, 1939), p. 5.

under existing arrangements than did the northern ones.[48] The South, which had used statistics of every kind lavishly, proved extremely sensitive to northern testimony which noted any southern advantage not related to mild winters and fair southern skies. When Governor M. Clifford Townsend, of Indiana, attempted to relate high freight rates to low southern wage scales, Judge Edgar Watkins, chief counsel for the Governors Conference, was on his feet in constant protest.[49] Governor Graves answered such charges in a radio speech, in which he asserted that "the actual facts are that responsible businesses of the South are paying comparable wages to those paid in the North."[50]

The Governors of several New England states testified that the South, rather than suffering from inability to compete with the North, was in fact seriously challenging the industrial supremacy of their section, to the great detriment of their business and labor. Governor Robert E. Quinn, of Rhode Island, cited statistics illustrating the southward migration of the textile industries, and declared, "I do know that the South has already taken advantage of Rhode Island and New England, and that if our industry is further attacked, that it will be impossible for New England or Rhode Island to continue to exist if we lose any more business. We have already lost too much."[51] As an example of this trend, he described the condition of his hometown, West Warwick:

> Here during 1917 there were seven Textile Plants with an assessed valuation of $3,078,704. In the year 1927 there were six Cotton Textile Plants . . . with an assessed valuation of $3,078,467. In the year 1937 all of these plants as active Textile Mills disappeared and the assessed value of the property of the town was $228,170. This sort of situation is duplicated in many localities of Rhode Island and throughout Southern New England. The textile products formerly manufactured in the mills located in Rhode Island are now manufactured in the South.[52]

Nor was the testimony of this nature confined to the well-known textile migration. It was shown that despite a freight rate disparity, South to North, of 105 per cent on rough stone, 110 per cent on dressed stone, and 113 per cent on carved stone, in carload lots, the production of Georgia granite nearly doubled between 1931 and 1935, while the production of the same quality stone in Vermont declined by more than 20 per cent.[53] Warning that the "story of the Deserted Village would be re-enacted here in New England" if the complainants' pleas were granted, Governor Wilbur L. Cross, of Connecticut, declared that "with all the natural advan-

[48] *Southern Governors Case,* pp. 315-319.
[49] *Time,* August 1, 1938, p. 39.
[50] Quoted in *ibid.*
[51] *Testimony . . . New England Governors Oppose Freight Rate Complaint Initiated by Southern Governors* (Buffalo, 1938), p. 17. Hereinafter cited as *Testimony of New England Governors.*
[52] *Ibid.,* p. 15.
[53] *Southern Governors Case,* pp. 276-284.

tages of climate which will bring them materially reduced living costs in fuel, clothing, recreation, and food, the South has God-given aids which even the Interstate Commerce Commission cannot match."[54] Other northern interveners charged flatly that the South had not justified its claim for parity, and said that the record of the case was not adequate for decision by the ICC.[55] The fears shared by all the northeastern states were expressed by Governor Lehman, New York, when he told the ICC examiners at Buffalo in July, 1938, that

> This movement to the South from the North has been a matter of serious concern to New York. Our Department of Labor reports that from 1919 to 1933 the number of textile establishments in the state fell from 12,834 to 7,806 and the number of wage earners from 343,000 to 222,000. New York's proportion of the total production of the country fell in this period, while that of North Carolina, South Carolina, and Georgia increased materially. . . . The Citizens of New York cannot remain purchasers of the products of industry, either in the South or in the North, unless their earning power is continued.[56]

The northern railroads, the actual defendants in the Governors Case, based their opposition to change on the historic policy of the ICC which had recognized and confirmed a higher level of charges in the South than in the North. They argued that the items named in the complaint were not in any way set apart from thousands of articles moving in interterritorial traffic, and urged that no change be made merely on the basis of North-South rate disparities, but rather that all the factors traditionally employed in rate determination be weighed. No proof of unduly prejudicial rates, they said, had been made.[57] A major consideration with all the carriers, and with other northern interests, was fear that a decision favorable to the South in this instance might lead to new logic and changing views in future Commission decisions. As a result, they labored carefully to stress precedent and tradition, rather than logical re-examination of the rate patterns. "We don't put our case on transportation conditions," their representative declared under cross-examination.

> We rise or fall by this proposition: that in a case of this sort the controlling standards are those which center from and radiate from rate histories and rate comparisons.
>
> *Q.* And do you not consider traffic or transportation conditions in fixing these rates?
>
> *A.* That's true.
>
> *Q.* Are you speaking for all the Northern carriers?
>
> *A.* All the Northern carriers; yes, sir.[58]

[54] *Testimony of New England Governors,* pp. 4-5.
[55] *Southern Governors Case,* pp. 318-319.
[56] *Time,* August 1, 1938, pp. 38-39.
[57] *Southern Governors Case,* pp. 315-317.
[58] *Ibid.,* p. 317.

The northern roads professed less interest in transportation costs than did the southern. One of their spokesmen provided the record with the following curious attitude:

Q. You men don't care anything about cost?
A. Rates are not based on cost.
Q. So it does not make any difference to you in performing your function what it costs in the South, New England, or the North to haul the freight?
A. What we are interested in, Judge, is what the traffic will bear, and the revenue needs of the carriers.
Q. Well, your broad statement was that when you made freight rates you did not pay any attention to costs whatever. That is a little too broad, is it not? You do not go below cost, if you know it, do you, when you make a freight rate?
A. I have never as a rate man taken into consideration the elements of cost of transportation, that is, in a physical sense.[59]

Representative Robert Ramspeck reacted to this information with the exasperation felt by many Southerners when he declared that "This is the only business in the world, so far as I know, which undertakes to sell its product without regard to cost."[60]

While testimony and arguments in the case were stretching on for more than two years, the Southern Governors were tightening the core of their organization and steadily extending its influence. Although actual evidence in the case was delivered in two public hearings, one at Birmingham, April 11-15, 1938, and the other at Buffalo, July 11-22, the issues involved were constantly in the news. In meetings at Washington January 6 and 7, 1938, the group attempted to dispel some Official Territory fears through newspaper advertisements asserting that their aim was simply to secure justice rather than an effort to steal the North's industry with promises of sweatshop labor. A meeting with the President on January 7 added prestige to the assembly's actions.[61] Through display advertising in the national magazines[62] and circulation of pamphlets in industrial circles, they carried their argument to the general public, and urged the advantages of the South for future industrial location. After the ICC Examiners proposed a favorable report in the case on February 27, 1939,[63] the Conference met at Atlanta on March 21, with Governor Rivers replacing Governor Graves as chairman. Executive Secretary "Chip" Robert flew in from Washington, and called for the state executives to "strike and strike hard" for further gains in the campaign for rate parity. "We must not allow

[59] W. L. O'Neil, chairman of the General Freight Committee, New York City, quoted by Senator Lister Hill, Speech to Alabama Furniture Dealers Association (Birmingham, July 26, 1939), printed in *Congressional Record*, 76 Cong., 1 Sess., *Appendix*, p. 3704.
[60] Speech to the Southern Wholesalers Association (May 19, 1939), printed in *ibid.*, p. 2122.
[61] Atlanta *Constitution*, January 8, 1938.
[62] See advertisement in *Time*, April 25, 1938, p. 5.
[63] *Railway Age*, CVI (1939), 389.

another 20 years to elapse," he said.[64] Governor Carl Bailey, Arkansas, brought his state into the organization at this meeting, and plans were made to invite Texas and Oklahoma to take part in future actions of the group.[65]

After hearing oral arguments by counsel in July of 1939,[66] the Interstate Commerce Commission decided the Southern Governors Case on November 22.[67] The Commission, squirming on its bench of judgment between North and South, denied the compelling nature of its earlier decisions and precedents, but hastened to add that its duty was to fix rates on transportation conditions, not to equalize sectional opportunities.[68] Chairman Joseph B. Eastman, speaking in a dissenting opinion, lamented the fact that the ICC "had been called on to decide this case, on the record, after it has in effect been decided, in advance and without regard to the record, by many men in public life, of high and low degree, who have freely proclaimed their views on what they conceive to be the basic issues."[69]

The ICC's response to the record, and to the crossfire of political threat and action to which it had been subjected, was a five to four decision in the South's favor on ten items of the fourteen commodity groups described. Only nine of the eleven members voted, and eight reached conclusions in accord with views in their home territories. Chairman Eastman, in denunciation of this sectional vote pattern, reminded the members of their responsibility to rule with "cold impartiality, for this commission has an equal duty with respect to every part of the country, and nothing will speed its ruin more quickly than the disease of sectionalism."[70] Eastman himself, author of a minority opinion denying the validity of the southern position, was from Massachusetts. Other commissioners who ruled against the complainants were Carroll Miller, of Pennsylvania; Charles D. Mahaffie, of the District of Columbia; and Claude R. Porter, of Iowa. The majority vote was cast by William E. Lee, of Idaho; Clyde B. Aitchison, of Oregon; John L. Rogers, of Tennessee; Walter M. Splawn, of Texas; and Marion M. Caskie, of Alabama. The two newly appointed members of the Commission, J. Haden Alldredge, of Alabama, and William J. Patterson, of Wisconsin, did not participate in the ruling.[71]

Significant groundwork for future action lay in the majority admission that "The desirability of rate structures providing reasonably uniform levels of rates from adjacent producing sections of the country to common markets is not open to serious question. . . . The relation of rates may be of greater importance than their intrinsic level or measure."[72] Equally

[64] Atlanta *Constitution,* March 20, 1939.
[65] *Ibid.,* March 21, 22, 1939.
[66] *Railway Age,* CVI (1939), 998.
[67] *Southern Governors Case,* p. 255.
[68] *Ibid.,* p. 320.
[69] *Ibid.,* p. 333.
[70] *Ibid.*
[71] *Ibid.,* pp. 331, 333, 347, 349.
[72] *Ibid.,* pp. 319-320.

important was the assumption that the cost of railroad transport in the South does not justify higher rates—a fact which the Commissioners admitted was open to further study. They recognized the importance of changes in the economic conditions of the South, and found that on certain commodities southern producers were suffering a distinct disadvantage as a result of transportation charges. With "freedom of movement" apparently the controlling factor in their decision, they ordered reduced rates on a number of the commodities named. The existence of successful southern competition in the North on some of these was not accepted as a basis for the maintenance of unreasonable rates.

The fourteen groups of commodities on which the ICC ruled, and the ten items on which relief was allowed, are listed below. Lower rates were ordered on the italicized articles, while charges on the remainder remained unchanged. (1) *Stoves, heaters, house-heating furnaces, and related articles;* (2) *stone;* (3) *enameled iron or steel plumber's goods;* (4) *cast-iron pipe fittings,* cast-iron service boxes, *iron-body valves, fire hydrants, brass pipe fittings,* and brass cocks or valves; (5) cast-iron hollow ware and fireplace fixtures; (6) boots and shoes; (7) excelsior and excelsior padding; (8) *soapstone and talc;* (9) paper articles, viz., cones, cores, tubes, *papeteries,* and school tablets; (10) drugs and medicines; (11) metal furniture and mattresses; (12) canned oysters, shrimp, and vegetables; (13) cordage and binder twine; and (14) chinaware.[73]

No general change was ordered by the group. The strength of the findings as a precedent for future decision, moreover, was weakened by the bare majority which ruled in the South's favor. Chairman Eastman's dissenting opinion pointed out that no appreciable difference in the condition of the two groups of commodities—those relieved and those whose rates were left unchanged—was stated.[74] The failure of the decision to relieve all the commodities weakens Eastman's implied argument that the majority had succumbed to sectional pressure in its ruling. It appears, rather, that the majority had combined response to the southern and western demands with keen notice of northern opposition. Rates were lowered on the commodities for which the strongest cases had been made, but the complaints less vigorously prosecuted went unheeded. The abstract reasoning by which the five commissioners accepted the South's argument was thus not carried to its logical end; compromise, rather than decisive action, was the key to the majority ruling.

Eastman further declared in his minority report that the evidence showed "rather clearly, in my judgment . . . the fact that the average cost of service is higher in the South than in the North. . . ."[75] In attacking the idea that the future of the South might hinge on the case, he noted that

[73] *Ibid.,* pp. 268-306, 331-332.
[74] *Ibid.,* p. 336.
[75] *Ibid.,* p. 345.

"Conspicuous by omission are the major products manufactured, mined, or grown in the South which account for the greater part of its commerce with the North. Moreover, with respect to some of the products included, the interest manifested in the proceeding by the producers and shippers within the South was scant."[76] Commissioner Miller attacked the record as "fragmentary and incomplete," and declared that the decision "is arbitrary and cannot endure."[77]

The Southern Governors hailed the Commission findings as a major victory, and met at Atlanta in December, 1939—their sessions coinciding with the world premier of *Gone With the Wind*—to draft a ten-year plan guaranteeing southern prosperity.[78] The precarious nature of the decision was recognized, however, and plans for attacks on the entire class structure were discussed. The National Democratic Platform of 1940 included a plank advocating the abolition of freight rate discrimination.[79] In sessions at Charleston April 15-16, 1940, they attempted to maintain their friendly majority on the ICC by urging the appointment of a Southerner to replace Commissioner Marion M. Caskie, who had resigned.[80] When the ICC in 1941 began hearings in the far-reaching Class Rate Investigation, the South was ready with a standardized body of complaint, supported by powerful, region-wide organization. Senator Tom Stewart, of Tennessee, voiced the popular view of the issue's importance when he told a nation-wide radio audience that

> The shackles of discrimination in the making of freight rates have been forged so fast about the ankles of southern industry that economic progress is impossible in that section. Economically the South is held in chattel slavery and no avenue of escape is seen so long as these discriminatory freight rates exist.[81]

[76] *Ibid.*, p. 334.
[77] *Ibid.*, pp. 348-349.
[78] Atlanta *Constitution*, December 15, 1939.
[79] Governor Frank Dixon, Alabama, had urged the Governors at Atlanta on March 21, 1939, to exact such a pledge from the national party. Atlanta *Constitution*, March 23, 1939.
[80] Atlanta *Constitution*, April 17, 1940.
[81] Tom Stewart, Address April 4, 1939, over the Columbia Broadcasting System, printed in the *Congressional Record*, 76 Cong., 1 Sess., *Appendix*, p. 1319.

CHAPTER IV

DIVISION IN THE SOUTH

The Interstate Commerce Commission was only a jump ahead of Congress when it initiated on July 29, 1939, the Class Rate Investigation.[1] When Congress ordered by the *Transportation Act of 1940* a general investigation of rates on manufactured products, agricultural commodities, and raw materials within and between the various territories,[2] the ICC complied by announcing that it would continue its scheduled study of all class rates east of the Rocky Mountains. The extensive survey proposed by the southern and western congressmen was thus limited to a considerable degree by the Commission action. Delayed time and again by the complicated shift of the national economy to a wartime basis, the Class Rate Investigation, when finally under way, ended many an uneasy alliance which had confused the issues in the Governors Case. The first hearings were held at St. Louis on July 10-11, 1941; and others followed at Indianapolis on September 22-October 1, 1942; Columbus, Ohio, November 16-27, 1942; and at Washington, March 29-April 1, 1943, and June 14-23, 1944.[3] The voluminous testimony recorded exposed clearly the conflicting views of shippers, carriers, and the consuming public on the question of how freight rates should be made. "So many characters have popped up in Docket No. 28,300," reported *Fortune,* "that the general effect is that of an Olsen and Johnson comedy that starts out as a relatively compact little drama and ends with half the audience running on and off the stage."[4]

The determination of the ICC to consider seriously general revision of national class rate patterns was violently opposed by shippers and carriers of the Northeast, who marshalled an astonishingly variety of arguments for postponement or dismissal of the investigation before any evidence was taken. Sorely overworked was the contention that pressure of the national defense effort—and later the war effort—was too great to afford leisurely consideration of peacetime problems. It was further asserted that facts of a boom era would prove valueless in remodeling a rate structure for long-range use. Typical was the appeal addressed to the Commission on July 23, 1940, by one hundred and sixty representatives of eleven commercial organizations in the Northeast, who met under the sponsorship of the New

[1] *Class Rate Investigation.*
[2] *Ibid.,* p. 66.
[3] *Ibid.,* pp. 8-9.
[4] "Freight Rate Battle," *Fortune,* XXX (October, 1944), 149.

York City Merchants Association. The production of necessary evidence, this group said, "would involve such a drain upon the resources of the industrial and transportation interests of the United States" that a critical block would be thrown before "necessary activities related to national defense."[5] Similar petitions and memorials were circulated until decision on the case in 1945. Various southern interests argued, in contrast, that the tremendous industrial expansion incident to preparation for war should not be denied the South because of inequitable freight rates, and pleaded that the future prosperity of the region depended on its ability to enter postwar competition on an equal footing with the North.[6] The Commission, deaf to appeals for cancellation, continued its careful preparation for the most extensive investigation in its history. A "pre-hearing" in the case was held at Chicago on October 28-29, 1940, where four hundred interested parties planned organization of the research and studies anticipated.[7] Direction of the proceedings was assumed by "Division 2" of the Commission, consisting of J. Haden Alldredge, Walter M. W. Splawn, and Clyde B. Aitchison—each, significantly, from the South or West. Official Territory found omnious this body's clear notice that decision would be sought on the desirability of future class rate scales on a nation-wide basis.[8]

In the South the united front which had characterized prosecution of the Governors Case no longer existed. Demands for postponement or cancellation began to flow from powerful shipper groups;[9] and the region's heavy industries withdrew the support they had given to earlier activities of the Governors Conference. Senator Tom Stewart, of Tennessee, noting this desertion, warned that "We in the South will not be able to obtain free and equal opportunity without a fight. That is already apparent from the activities of cetrain large absentee-owned interests operating in the South, which fear that they may lose their present freight rate advantage."[10] A clear-cut division of the region's opposing factions was apparent at meetings of a "Southern Transportation Conference," sponsored by the Southern States Industrial Council on December 10, 1941, at Birmingham.[11] Lumber, coal, iron, and steel interests were well represented,[12] and spokesmen for rate revision were in attendance.[13] This assembly, called to consider the "need for public discussion and hearing on transportation

[5] *Railway Age,* CIX (1940), 160.
[6] *Ibid.,* CXI (1941), 248.
[7] *Class Rate Investigation,* p. 8.
[8] Frank L. Barton, "The Interstate Commerce Commission Considers the Class Rate Structure," *Journal of Land and Public Utility Economics,* XVII (1941), 10.
[9] *Railway Age,* CIX (1940), 561.
[10] "Freight Rates in the South," address of April 17, 1940, over the Columbia Broadcasting System, printed in the *Congressional Record,* 76 Cong., 3 Sess., *Appendix,* p. 2199.
[11] *Proceedings, Southern Transportation Conference, passim.*
[12] *Ibid.,* p. 64.
[13] *Ibid.,* pp. 3-4.

problems affecting southern industry,"[14] illustrated the bitter clash between southern opponents in the case. A. G. T. Moore, commercial traffic agent for the Southern Pine Association, lamented the earlier policies that brought the group here

as a result of glorious hindsight to undo some of the things that all of us are partially responsible for. . . . We are in a hole of our own creation, and if we get out of it we have to lift ourselves out together. I cannot accept Mr. Tilford's viewpoint [John E. Tilford, Assistant Vice-President, Louisville and Nashville Railroad] that the railroads are blameless for the situation in which they find themselves. Furthermore, my explosive friend, Mr. McDonald [who had earlier charged railroad domination of the conference] should know that I for one am not under the control of the railroads, although I have been a saint with the operating officers and a sinner with the traffic officers at the same time. . . . To talk of raising rates on basic industry products as offsets to class rate reductions is, to say the least, poor economy. . . . The plan is preposterous.[15]

Walter R. McDonald, vigorous chairman of the Georgia Public Service Commission, retorted that Moore

has been mighty smart and bright in his effort to divorce himself from any selfish interests in the stand that he is proposing for you to take here today, and while he is not asking for any free advice, I would like to tell Mr. Moore he will get a good deal further if he will be honest about it, and will tell the public he does have a vital interest and that is the reason he is opposing it. . . .[16]

Those shippers who feared that their favorable commodity rates might be raised should the campaign for lower class rates be successful, launched a vigorous attack on manifestations of the "whine and minus sign in Southern psychology."[17] Alvin W. Vogtle, deprecating attempts to organize the South for the support of rate parity, urged that

It is basically a mistaken policy to encourage a bias against the North or to permit ourselves to be pictured as a hostile, resentful people. Actually, we are kindly, hospitable, conservative people, with deep-seated respect for property and property rights and a friendly feeling for outside capital. . . .[18]

Have we embarked on a program of stifling Southern enterprise and of frightening away would-be investors? It could not have been more effectively planned than if its deliberate objective was to discredit the South. It encourages a helpless feeling of being victims of conditions beyond our control.[19]

The extent of this southern opposition to class rate revision is difficult to measure accurately. John P. Ferris, TVA advisor in the controversy, declared that the "weight of interests in favor of retaining the *status quo*

[14] *Ibid.*, p. 2.
[15] *Ibid.*, pp. 50-51.
[16] *Ibid.*, p. 72.
[17] John Temple Graves, quoted by Alvin Vogtle, *Southern Freight Rates*, reprint from the Birmingham *Age-Herald*, October 2, 1944.
[18] *Proceedings, Southern Transportation Conference*, p. 20.
[19] *Ibid.*, p. 27.

greatly outweighed the voices from the South and West who wanted a change."[20] Certainly the shippers of the region's heaviest loading commodities were aligned with northern defenders of the existing rate structure. These included the interests whose rates were already as low, or lower, than rates on similar goods in Official territory—shippers of fertilizer, brick, coke, coal, lime, logs, lumber, pulpwood, sand, gravel, crushed stone, slag, pig iron, iron and steel scrap, sulphuric acid, and iron ore.[21]

In the forefront of this defense were the southern carriers, whose officers spoke tirelessly to civic clubs, commercial organizations, and other selected audiences in an effort to pound home the idea that "Freight rates are the result and not the cause of industrial development."[22] They declared that the region's rates, far from hampering business expansion, "have always been made to help, not to hinder, Southern industry." Proof of the success of this policy, they said, lay in statistical evidence that in recent years "the South has made more rapid industrial progress than the remainder of the country."[23]

Assertions of this type raised immediately the charge, of course, that the southern rail executives were only giving voice to the northeastern banker interests which controlled the roads. C. E. Childe, Omaha rate student, told the United States Senate that "when the bankers lay down the law . . . the operators of the railroads have to comply."[24] In answer the rail operators pointed out their support to southern pleas for parity on specific items in the Governors Case, and argued that "In our own selfish interest, if for no other reason, we will see that all Southern industry remains free to grow and prosper, in so far as freight rates may affect its program and success."[25] This argument cannot be ignored, for railroading itself is possibly the South's greatest industry. Its dependence on a general level of prosperity for successful operation is notable. Purchasing annually more than $218,500,000 worth of materials and supplies in over 5,000 of the South's cities, located in 1,286 of the 1,478 counties of the 15 southern states, its payrolls go to 270,000 men and women, who earn about $500,000,000 a year. In taxes it contributes to the counties, cities, and states about $66,500,000 annually.[26]

The railroads undoubtedly influenced the major sectors of business in the South which expressed opposition to reduction in class rates. "There is no doubt in my mind," wrote one prominent critic of the roads,

[20] John P. Ferris to the Southern Governors Conference, *Transcript of Proceedings, Mobile, Alabama, Thursday and Friday, July 19 and 20, 1945,* p. 28.
[21] *Class Rate Investigation,* pp. 164-170.
[22] E. R. Oliver, *The South and Its Freight Rates,* speech to the Chattanooga Kiwanis Club (July 27, 1943), p. 8.
[23] *Ibid.*
[24] *Senate Hearings,* p. 50.
[25] E. R. Oliver, *Look Ahead—Look South!,* speech to the Southern Association of Science and Industry (Birmingham, April 23, 1943), p. 6.
[26] Ernest E. Norris, *Transportation. Don't Believe All You Hear,* speech to the Southern States Industrial Council (Atlanta, January 23, 1940), p. 2.

but what the Southern carriers told these commodity shippers that unless they actively opposed equality in class rates, and assisted the railroads in defeating this proposition, the railroads would increase their commodity rates to offset any loss in revenue, caused by reduction in class rates.[27]

The element of northern ownership must also be considered in connection with the position of southern industry, but the above quotation is probably a more accurate explanation. Like the railroads, southern business supported the Governors Case, when it was being actively fought by the concentrated forces of northeastern wealth. If big business in the South could only echo the sentiments of absentee owners, then no reason presents itself for its freedom to state contrasting views in the earlier case. It would appear rather that the general southern opposition to class rate reduction stems in large part from the home-grown fears of the South's latter day industrial Bourbons—fears that the achievement of class rate parity would mean the sacrifice of favored position in the commodity rate structure.

The most active business association in this camp was the Southern States Industrial Council, which Senator Lister Hill charged in 1940 with attempting to "sabotage" the ICC's Class Rate Investigation. Hill charged the Council with "seeking to profiteer from the South's freight-rate fight at the expense of other Southern businessmen."[28]

If Council is successful in sabotaging this investigation, the ordinary business man, the worker and the farmer of the South will consider it a stab in the back at a crucial moment when they are about to obtain freight-rate equality and the right to develop industrially.[29]

The Council was represented in the ICC hearings by C. E. Widell, Nashville rate expert, who testified that the general constituency of the association would run to 5,700 large and small industries.[30] T. M. Henderson, of the Southern Traffic League, declared that the Council is "an organization of railroads, manufacturers, bankers, lawyers, etc., and a relatively few individual Southern industries who are mainly producers and distributors of raw materials, semi-manufactured products, basic commodities, and manufactured products."[31] It was officially identified by the ICC as "a voluntary, non-profit organization composed of the major manufacturing interests in thirteen southern states."[32]

Widell spoke not only for the Southern States Industrial Council, but also represented the Tennessee Products Corporation, Nashville; the May Hosiery Mills, Nashville; the Werthan Bag Corporation, Nashville; the Marshall Stove Corporation, Lewisburg, Tenn.; the Lebanon Woolen Mills,

[27] T. M. Henderson, in a letter to the author dated November 7, 1946.
[28] Quoted by J. Lacey Reynolds in the Tulsa *World*, reprinted March 1, 1940, in the *Congressional Record*, 76 Cong., 3 Sess., *Appendix*, p. 1163.
[29] *Ibid.*
[30] C. E. Widell, *Transcript of Testimony*, p. 3146.
[31] T. M. Henderson, *The Southern Class Rate Adjustment* (Nashville, 1943), p. 16.
[32] *Class Rate Investigation*, p. 125.

Lebanon, Tenn.; the Standard Knitting Mills, Knoxville; the American Textile Woolen Company, Sweetwater, Tenn.; the McMinnville Manufacturing Company, McMinnville, Tenn.; the Palmyra Lime Works, Palmyra, Tenn.; the Gray-Knox Marble Company, Knoxville; and iron, asphaltic limestone, and lumber interests in Alabama, Georgia, Mississippi, and North Carolina.[33] Widell argued that an "ideal rate structure for any manufacturing region like the South" should have low rates from inbound raw materials, rates on manufactures that will "protect" the South's industry, rates graded to let southern manufacturers best outside competition within the region, and rates to other regions at the lowest possible scale. "In point of fact," he concluded,

> *these are the predominant features of the southern rate structure!* If purposely devised for such ends it could hardly have been better constructed. For that reason I say that the South does possess, regardless of all its defects, the best general rate structure of any manufacturing region in the country.[34]

A. J. Ribe, Birmingham traffic agent, testified in favor of existing rates for sixty southern shippers.[35] L. A. Gossage spoke for T. L. Herbert & Sons, and affiliated companies, who ship 20,000 carloads a year of brick, sand, gravel, tile, coal, building materials, mill supplies, and other traffic.[36]

The Southeast Shippers Conference, "a voluntary organization of manufacturers, shippers, commercial organizations and receivers of freight located in the South,"[37] opposed the uniformity sought by the revisionists. A kindred group was the Southeast-Southwest Shippers Conference, formed at Birmingham in 1940 to express opposition to change by manufacturers and raw material producers with satisfactory rates.[38] Opposing any change which would affect, "directly or indirectly," the commodity and exception rate structure were the Southern Paper Manufacturers Conference, representing 95 per cent of southern producers, and the Southern Pine Association, speaking for 40 per cent of the pine lumber producers in the South and Southwest.[39]

The arguments of the commodity shippers and their spokesmen ran from lofty dismissal of the rate controversy as an "interesting exercise in speculative commercial geography"[40] to denunciation of the Governors for threatening the ICC with a rule or ruin policy.[41] The principle of uniformity, declaimed Alvin W. Vogtle, "would introduce into our economic

[33] C. E. Widell, *Transcript of Testimony*, p. 3108.
[34] C. E. Widell, *The Southern Freight Rate Structure* (Nashville, 1943), p. 3.
[35] A. J. Ribe, *Transcript of Testimony*, p. 3026.
[36] L. A. Gossage, *Transcript of Testimony*, p. 3083.
[37] *Class Rate Investigation*, p. 126.
[38] T. M. Henderson, *Transcript of Testimony*, p. 5025.
[39] *Class Rate Investigation*, p. 186.
[40] Robert S. Henry, *The South and Its Railroads After the War*, speech to the Nashville Kiwanis Club (April 23, 1943), p. 5.
[41] Roy L. Garis, "Southern Freight Rate Controversy," reprinted from *The Commercial and Financial Chronicle*, August 24, 1944, p. 2.

system one of the greatest readjustments ever made or faced in the history of the South and would prove more destructive to the South than did Sherman's March to the Sea."[42] One of the more extreme converts to this smoothly geared opposition to change was a prominent Mississippi editor, who denied the existence of discrimination, and declared that "it is astonishing that the general public . . . continue to believe the false, foolish and fantastic fulminations of demagogues and shyster lawyers seeking to show that such is the case. . . . Strangely enough," he continued,

it is not merely the loose-lipped demagogues and fee-hunting lawyers who make vocal the contention of freight rate discrimination against the South. That absurd contention is always the chief topic of discussion at annual meetings of the Southern Conference of Governors, and always they adopt resolutions on the subject, breathing much righteous wrath, when the cold truth is that freight rates is something none of our Southern Governors knows a blessed thing about. They are merely accepting at face value the false preachments of others. Like some species of dirty birds they befoul their own nests, they prate about unjust and unfair freight rates thinking it may help them find favor with the people as they seek to perpetuate themselves in places carrying pelf and power.[43]

The allegation of gubernatorial ignorance of technical rate questions might be considered well founded were it not for the activities of the public utilities commissioners in the various southern states. These commissions were the source of the Governors' knowledge, and the mainspring of much of their activity. In their own southwide organization, the Southeastern Association of Railroad and Utilities Commissioners had begun a fight on high class rates before the Governors organized. This group, acting under statutory injunction in member states requiring prosecution at evidence of rate discrimination, was set up for joint and cooperative action by the commissioners of Alabama, Florida, Georgia, Louisiana, North Carolina, South Carolina, Tennessee, Mississippi, Kentucky, and Virginia—the latter two not supporting the other states in the freight rate campaign. Regional president of the Association during the Class Rate Investigation, and its most active pamphleteer and spokesman on class rate matters, was Walter R. McDonald, of Atlanta. A member of the Georgia Public Service Commission since January 1, 1923, and its chairman since 1937, McDonald also served as Executive Secretary of the Southern Governors Conference.[44] He gave succinct expression to his stand when he told the Southern Transportation Conference that

It is abhorrent to the school of thought within my camp that there could possibly be any other side to the question of the relationship of the pending rate investigations to the South's industrial economy. Within the bounds of pro-

[42] Alvin W. Vogtle, *A Non-Technical Presentation of the Interterritorial Freight Rate Question as Affecting the South,* speech to the Southeast Shippers Advisory Board (Jacksonville, March 21, 1940), p. 4.

[43] Frederick Sullens, *Slandering the South,* reprint of an editorial in the Jackson, Mississippi *Daily News,* May 12, 1943.

[44] Walter R. McDonald, *Transcript of Testimony,* p. 5106.

priety and decorum, may I remind you that there are those active in the promotion of this meeting who have undertaken to discount it, if not debunk, the efforts of the Southern Governors' Conference to bring about economic equality as between the several regions of the United States through a fair rate adjustment. We are guaranteed under our Constitution complete equality, and any condition which tends to deny it should be summarily remedied.[45]

Business and commercial advocates of class rate revision were led by the Southern Traffic League, a federation of traffic and transportation organizations through the South. This group's Executive Secretary, T. M. Henderson, of Nashville, testified that it spoke for the Atlanta Freight Bureau, the Chattanooga Manufacturers Association, the Charlotte Shippers and Manufacturers Association, the Cotton Manufacturers Association of South Carolina, the North Carolina Cotton Manufacturers Association, the Georgia-Alabama Textile Traffic Association, the Southern Furniture Manufacturers Association, the Southern Newspaper Publishers Association, the Growers and Shippers League of Florida, the Jacksonville Traffic Bureau, the Memphis Freight Bureau, the Tampa Traffic Association, the Port Authorities of South Carolina, Florida, Virginia, and North Carolina, and other similar organizations.[46] Henderson said that the Nashville Traffic Bureau, a typical component of the larger group, included wholesale distributors of paper and paper articles, groceries, drugs, hardware, auto accessories, dry goods, and notions; retail department stores, dealers in farm implements, cold storage concerns, plumbing and heating supply companies, newspaper publishers, printers and office supply dealers, public utilities, and large consumers of coal; manufacturers and producers of paper boxes, sand, gravel, brick, lumber, hardwood flooring, wood and metal culvert, stoves, iron, steel, cereal products, feed, bed springs, mattresses, machines, caskets, ice, candy, work clothes, shirts, and oil.[47]

It will be evident that generalizations on division between this group and such associations as the Southern States Industrial Council will not be too exact, since many companies are members of both groups. Neither can speak for all its members. But the facts already presented, supported by the conclusions of the ICC, indicate that major industry in the South is opposed to change; whereas the small manufacturer—the operator of the shop and store, as opposed to the plant—and dealers in consumer goods, favor a uniform rate structure. Public authorities have chosen to view this latter stand as representative of the South's best interest. But in doing so, governors and utilities commissions have disregarded the advice and influence of the region's big producers. The state executives argued that

[45] *Proceedings, Southern Transportation Conference*, p. 9.
[46] T. M. Henderson, *Transcript of Testimony*, p. 5013.
[47] *Ibid.*, p. 5012.

Some of the great industries which had the ear of the king could get adjustments that the average man could not, and that the only way we could get the matter straightened out was to have rates published applicable to all that were on a satisfactory basis, just as they are and have for a long time been in the North and East.[48]

On record with the Governors Conference in favor of uniform class rates were the American Farm Bureau Federation,[49] the CIO,[50] and the Tennessee Valley Authority. The latter agency continued its research on the problem and delivered to Congress in 1943 a study entitled, *Regionalized Freight Rates: Barrier to National Productiveness.*[51] Director David Lilienthal led personally the TVA effort to have freight rates treated as a national, rather than a sectional, issue. "Handicaps on a region's productiveness," he said, "will be felt first by the region itself, and to that extent they are regional problems. But they will also be felt, and most painfully, by the country as a whole. The shackling of any region puts fetters upon the strength of the whole nation."[52]

Soon after the Class Rate Investigation was announced, the Governors Conference found new cause for complaint in the location of defense plants which mushroomed and multiplied in 1940 and 1941. The Federal government announced in the spring of 1940 that the new plants would go to "protected areas," and the Conference hurried to urge the availability of the interior South, remote from such attractive targets as the industrial centers of the Northeast. Meeting in Atlanta on June 10, 1940, the Governors offered "in a most unselfish and patriotic" gesture, the raw materials, the power, and the labor surplus of the Southeast as an inducement for government contracts.[53] Between June, 1940, and September, 1941, however, only 7 per cent of the defense contracts signed were awarded to the South. Alabama and Tennessee were the only states to receive as much as 1 per cent, while New York alone was given 8 per cent. Official Territory was given 55 per cent of the plants. The southern share of permanent building appears even smaller when it is considered that its figure includes numerous barracks and camps, of which so many were located in the warmer states of the South.[54] Donald M. Nelson, Office of Production Management Head, explained to a special House Committee investi-

[48] J. V. Norman to the Southern Governors Conference, *Transcript of Proceedings, Mobile, Alabama, July 19 and 20, 1945,* pp. 12-13.

[49] *Class Rate Investigation,* p. 123.

[50] "Freight Rate Battle," *Fortune,* XXX (October, 1944), 193.

[51] *House Document 137,* 78 Cong., 1 Sess. (1943). Hereinafter cited as *Third TVA Report.*

[52] David Lilienthal, address to the Third Annual Transportation Conference, University of Nebraska, Lincoln, April 7, 1941, printed in the *Congressional Record,* 77 Cong., 1 Sess., *Appendix,* p. 1665.

[53] Walter R. McDonald, *Proceedings, Southern Transportation Conference,* p. 17.

[54] Frank L. Barton, "The Freight Rate Structure and the Distribution of Defense Contracts," *Southern Economic Journal,* IX (1942), 127.

gating national defense labor migration that "the distribution of Army and Navy orders has tended to follow rather than to deviate from the previously existing pattern of industrial activity."[55] Attributing these patterns to freight rates, the Governors Conference renewed with new energies its highly vocal demands for an end to discrimination. In sessions of the Conference on March 15, 1941, at New Orleans, Governor Frank Dixon, of Alabama, led demands for a fair share of the new industries.[56] Governor Eugene Talmadge, of Georgia, was unable to attend, but sent son Herman to read his argument against further reliance on action by the ICC for relief. "It is my suggestion," Governor Talmadge wrote, "that this Conference request counsel to give immediate and careful study regarding the possibility of instituting appropriate action in the courts of competent jurisdiction. . . ."[57] This idea, adopted by a later Georgia governor, was not acted on by the Conference. The group instead organized a committee to make a personal appeal to President Roosevelt for an end to discrimination in contract awards.[58] When the President heard of this plan, he warned in advance that national rather than regional interests must be served first in constructing defense industries.[59] Governors Frank Dixon, of Alabama, Eugene Talmadge, of Georgia, Burnet R. Maybank, of South Carolina, Prentice Cooper, of Tennessee, Sam Jones, of Louisiana, and Paul B. Johnson, of Mississippi, declared themselves undiscouraged after their talk with the President on April 9, 1940.[60]

Failure to win any substantial relief on this complaint brought renewed threat of separate political action by the Solid South should the National Democratic party fail to accede to its demands. "I say the New Dealers, sitting in office by grace of the Southern ballot," wrote Governor Sam Jones, of Louisiana, "have been blind and deaf when the South pleaded with them to begin correction of the No. 1 cause of the nation's No. 1 economic problem."[61] On March 25, 1943, Governor Ellis Arnall, of Georgia, a newcomer to the Conference, warned fellow governors that "nothing but cold-blooded politics, waged with relentless unity, would rescue the South from its accepted role as a disfavored tomcat, prowling the political and economic backyards of a nation addicted to sectional snobbery."[62] Senator Claude Pepper, of Florida, flew in to this Jacksonville, Florida, meeting of the Conference with what the newspapers described as an "olive branch" from the White House. The Conference was said

[55] Quoted in *ibid.*
[56] Atlanta *Constitution*, March 16, 1941.
[57] *Ibid.*, March 17, 1941.
[58] *Ibid.*, March 18, 1941.
[59] *Ibid.*, April 10, 1941.
[60] *Ibid.*
[61] Governor Sam Jones, as told to James Aswell, "Will Dixie Bolt the New Deal?," *Saturday Evening Post*, CCXV (March 6, 1943), 42.
[62] Atlanta *Constitution*, March 26, 1943.

to have extracted generous promises of more help from the administration in the freight rate controversy, a larger share of war-effort spending, and more political influence for the South.[63] The executives continued their plans, however, to act as a unit in the Convention of 1944.

The Conference also made an abortive effort in 1943 to join a coalition of far western states to the union which had been effected with Arkansas, Texas, and Oklahoma, in 1939. The strong demand for class rate revision sustained by the southwestern states raised hopes that a grand union of the South and West, on a regional as well as congressional level, would prove an irresistible force in party politics. The Southwest, which handled its own representation before the ICC in the Class Rate Investigation, had adopted an even more determined position than the eight Conference states in Southern Territory. Where the governors of the eight southern states "emphatically" insisted that commodity rates not at issue should not be disturbed, the states of Arkansas, Oklahoma, Texas, Kansas, and Louisiana (west of the Mississippi) made no objection to uniformity on commodity rates.[64] The southwestern stand was taken despite the fact that, as in the South, major commodity rates on such items as petroleum, compressed cotton, stone, etc., were lower than those in Official Territory.[65]

Talk of adding the states of the West to the "Conference Bloc" had been heard as early as 1940, when Georgia's Walter R. McDonald called a side meeting of southern, southwestern, and western representatives during a session of the National Association of Railroad and Utilities Commissioners at Miami. This group, assembling at Fort Lauderdale on December 11, 1940, heard Governor E. D. Rivers urge cooperative action where the regions held common interests.[66] McDonald continued to consult with the western commissioners through 1941 and 1942, although separate presentations were made during hearings in the Class Rate Investigation.[67] An effort to coordinate more closely the desires of the two regions was made by southern governors who attended the meeting of the National Governors Conference at Columbus, Ohio, on June 23, 1943. Informal talks there with five western executives laid the ground work for a joint meeting on freight rates at the end of the summer.[68]

This plan brought twenty-one chief executives from the West and South to Denver on September 17, 1943, for two-day consideration of the issues at stake.[69] The limelight at the meetings fell on Georgia's Ellis Arnall, the nation's youngest governor, who, with Governor J. Melville Broughton, of North Carolina, was played up by the Denver newspapers

[63] *Ibid.*, March 27, 1943.
[64] *Class Rate Investigation*, p. 236.
[65] *Ibid.*, pp. 238-240.
[66] *Railway Age*, CIX (1940), 955.
[67] Southern Governors Conference, *Minutes of the Meeting* (Miami, January 11-13, 1942), p. 95.
[68] *Railway Age*, CXIV (1943), 1274.
[69] Atlanta *Constitution*, September 18, 1943.

as a possible presidential candidate.[70] The nine southern governors present, however, found that the twelve Westerners, of whom eight were Republicans, were more concerned with an attack on the New Deal than with freight rates.[71]

When the meeting opened, swarms of railroad men descended on the assembly to warn the western governors of the evils inherent in recently introduced congressional measures looking to freight rate revision.[72] In the first session, Governor John C. Vivian, of Colorado, informed the gathering of the chance presence that day of William M. Jeffers, President of the Union Pacific Railroad and retiring Rubber Czar. Jeffers rose to make what Governor Andrew F. Schoeppel, of Kansas, described as "the most forceful and closely reasoned 'impromptu' speech I ever heard."[73] When the rail interests were done with their work, the western governors refused to endorse congressional action on rates, declined further joint conferences, and decided not to support the position of the Southern Governors Conference.[74] The only state outside the Conference willing to give full support to the South-Southwestern campaign was Kansas.[75] Opposition in the West was led by the Mountain Pacific Territory governors of California, Idaho, Washington, and Montana, while Governor Arnall, Governor Olin D. Johnson, of South Carolina, and Governor Chauncey Sparks, of Alabama, were the South's chief spokesmen.[76] Mountain Pacific Territory rates were not at issue in proceedings before the Interstate Commerce Commission, but shippers in that area feared action which might lead to nationwide uniformity.[77] This would elevate to distance scales commodity rates on such products as lumber from the Northwest, and citrus fruits from California, which crossed the nation on transcontinental rates much lower than prevailing charges for any one territory. On September 21-22, 1943, 350 members of the Pacific Northwest Advisory Board, a traffic association, gave blunt notice from meetings at Spokane, Washington, that if any western governors favored legislation for changes in the rate structure, they did not represent West coast shippers.[78] The Mountain Pacific States Conference of Public Service Commissioners met at Phoenix, Arizona, on January 14, 1944, and resolved to oppose any agitation for rate uniformity.[79] In the zones of Western Trunk Line Territory, opinion was divided as a result of the varying interests within many of the

[70] *Ibid.*
[71] *Ibid.*, September 20, 1943.
[72] *Ibid.*
[73] Quoted in "Freight Rate Battle," *Fortune,* XXX (October, 1944), 193.
[74] *Railway Age,* CXV (1943), 498.
[75] "Freight Rate Battle," *Fortune,* XXX (October, 1944), 154.
[76] *Railway Age,* CXV (1943), 498.
[77] *Class Rate Investigation,* p. 242.
[78] *Railway Age,* CXV (1943), 536.
[79] *Ibid.*, CXVI (1944), 327.

states concerned. Many groups wished to extend the boundaries of Official Territory to include their immediate area, but retain differentials farther West, thus gaining for themselves the advantage held by shippers in the Northeast. Similar views were held by some shippers in each rate level area of the West.[80] In no case did the midwestern states achieve the unity existing in the South and Southwest. Further, though the day had passed when the great plains were the royal parks of railway empire, the influence of the roads was far more pervasive in those sections than in the South.

Chastened, the Southern Governors turned from their effort to win the West, and concerned themselves with prosecution of their interests in the Class Rate Investigation. In January, 1944, they met at Washington to hear Vice-President Henry Wallace attack discriminatory rates, and received once again the sympathy of the President with their cause. Following this session, the eleven governors, twenty-eight senators, and eighty-nine representatives made public a declaration favoring equal rates "wherever transportation conditions . . . will permit."[81]

The South's congressmen were not content to stand quietly aside, while the governors made headlines, and while the ICC moved through the apparently interminable intricacies of the Class Rate Investigation. Senator Tom Stewart, of Tennessee, had introduced on July 10, 1941, a resolution providing for payments to shippers for the equalization between the territories of charges for the transport of defense materials.[82] This effort to accomplish by law the aim of the Governors Conference with regard to defense plant location was carried on in the House by Representative Estes Kefauver, of Tennessee.[83] After hearings before a subcommittee of the Senate Committee on Interstate Commerce, the measure was not again considered, although it was reintroduced in the 78th Congress.[84] The idea was opposed by the ICC, which informed Congress that the enormous administrative burden incident to such a rule—the bill envisioned ICC certification of all such shipper claims—would leave no time to the Commission for its normal business.[85]

More significant was the use by southern congressmen of a research agency created by provisions of the Transportation Act of 1940 to prove the southern freight rate cause to the nation. This Transportation Board of Investigation and Research was set up to report to Congress and the President on the "relative economy and fitness" of carriers by rail, highway, and water in the division of the national transport burden. The agency was to survey methods for the proper development of competition

[80] *Class Rate Investigation*, pp. 123-124.
[81] *Railway Age*, CVXI (1944), 257.
[82] *Congressional Record*, 77 Cong., 1 Sess., pp. 5921-5922.
[83] *Ibid.*, p. 6657.
[84] *Ibid.*, 78 Cong., 1 Sess., p. 26.
[85] *Railway Age*, CXI (1941), 210.

between carrier types, uncovering the various tax burdens carried, and the extent of government subsidy to the three types.[86] In December, 1941, however, log-rolling southern senators directed by Kenneth McKellar, of Tennessee, won increased funds for the Board after extracting from the members promises of an investigation and report on interterritorial rates.[87] The House wrangled briefly over this duplication of the ICC investigation, but allowed the increased approriation to stand.[88] Of the $246,000 addition thus won, the Board expected to disburse $35,000 for the rate survey, though it pointed out that such a fund was not early adequate for the task.[89] D. Philip Locklin, University of Illinois economist, was chosen to make the study by Board Members Nelson Lee Smith, Chairman, of New Hampshire, Robert E. Webb, of Kentucky, and C. E. Childe, of Nebraska. Congress seem to lose sight of the intended functions of the Board in subsequent discussions of its activity. In July, 1942, after President Roosevelt had prolonged by executive order the life of the group for two years, interest in the Board's progress on the interterritorial survey dominated congressional debate on further appropriations. Senator McKellar served blunt notice of legislative regard for impartial study with a warning to the Board that "If you were to report that there was not any discrimination now, your report would not be worth two bits in my mind and in anybody else's mind, because everybody knows that discrimination now exists."[90]

The Board's discovery, recorded on March 30, 1943,[91] that the South was suffering from an unfair freight rate structure, came as a surprise to no one. Its conclusions, based to a considerable degree on the evidence and exhibits introduced in the Class Rate Investigation, were more inclined to generalizations than were those of the ICC. Where the latter body hazarded no conclusions on the relative level of commodity rate structures in the various territories, the Board of Investigation and Research found that the average levels of southern rates, class and commodity, were between 3 and 5 per cent over Official levels.[92] It recommended that Congress add to the Interstate Commerce Act a statement that it "is in the interest of a proper development of the country as a whole that there should be esablished a uniform classification of freight and a uniform scale of class rates," and further suggested a time schedule to be followed by ICC

[86] Report of Nelson Lee Smith, Chairman of the Transportation Board of Investigation and Research, to the Southern Governors Conference, *Minutes of the Meeting* (Miami, January 11-13, 1942), p. 82.
[87] *Congressional Record,* 77 Cong., 1 Sess., pp. 9781-9783.
[88] *Ibid.,* pp. 9816-9821.
[89] *Railway Age,* CXI (1941), 1054, 1070; CXIII (1942), 114.
[90] *Ibid.,* CXIII (1942), 114.
[91] *Summary Report on Study of Interterritorial Freight Rates, House Document 145,* 78 Cong., 1 Sess. (1943).
[92] *Ibid.,* p. 12.

in setting up such a policy.[93] Board Members Robert E. Webb and C. E. Childe, from Southern and Western Trunk Line Territories, signed these recomemndations; while Chairman Nelson Lee Smith, of Official, agreed with the findings but objected to the majority suggestions.[94] This summary report was followed on September 24 by a fuller analysis reaching the same conclusions.[95]

The effect of the Board findings was heightened by the almost simultaneous publication of a third TVA study on March 25, 1943. Entitled *Regionalized Freight Rates: Barrier to National Productiveness,*[96] this report surveyed regional variations in rates, costs, and rate making policies; production specializations in the regions; occupational maladjustments of the South and West; and explained how the decentralization of industry might become a force for greater production in the nation at large. To generalization, the TVA study added statistics showing the effects of differential rates on specific industries. These case histories, it concluded,

> are deeply pertinent to the issue. But they do not and cannot tell the whole story. They cannot tell how much adverse freight rates had to do with the decline of enterprises now dead. Without speculative refinement, they cannot tell how much existing southern and western industries could increase their capacity, production, sales, and pay rolls if the slow poison were not present And above all, case studies cannot say how many peculiarly southern and western prospects for new industry have been stillborn because adverse rates created too cold an environment for their survival.[97]

Widespread interest in the *Third TVA Report* and the Board of Investigation and Research findings was intensified by Washington hearings in the Class Rate Investigation from March 29 to April 1. Each of these independently conducted probes became a sledge hammer blow on the rock of rate disparity. The cumulative effect of the three raised congressional tempers to the boiling point, and the pressure generated burst out in a rash of bills aimed at implementation of the BIR suggestions. Acting haphazardly, with an eye to hometown headlines, senators and representatives introduced sixteen bills designed to achieve rate uniformity.[98] Many em-

[93] *Ibid.*, p. 39.
[94] *Ibid.*, pp. 39-42.
[95] *Report on Interterritorial Freight Rates, House Document 303,* 78 Cong., 1 Sess. (1943). Hereinafter cited as *BIR Report.*
[96] *Third TVA Report.*
[97] *Ibid.*, p. 57.
[98] Sponsors and their bills, in order of introduction, were Senator Tom Stewart, Tennessee, S J Res. 46, March 30, 1943; Senator John H. Overton, Louisiana, and Senator John L. McClellan, Arkansas, S 947, April 2, 1943; Representative J. Percy Priest, Tennessee, HR 2378, April 2, 1943; Representative Overton Brooks, Louisiana, HR 2391, April 5, 1943; Representative Hampton P. Fulmer, South Carolina, HR 2435, April 8, 1943; Representative Lyle H. Boren, Oklahoma, HR 2436, April 8, 1943; Representative Joseph R. Bryson, South Carolina, HR 2519, April 16, 1943; Representative Wright Patman, Texas, HR 2547, April 21, 1943; Senator Tom Stewart, Tennessee, S 1030, April 22, 1943; Representative A. L. Miller, Nebraska, HR 2645, May 7, 1943; Senator Lister Hill, Alabama, S 1124, May 24, 1943; Represent-

ployed identical wording, and only a few varied from the idea of a simple direction to the ICC to act immediately for the creation of uniform classification and uniform class rates.

These proceedings in the spring and summer of 1943, coinciding with the Southern Governors' invasion of the West, so alarmed shippers of the Northeast that they began the formation of new defense committees, bringing new tension to the atmosphere in which the ICC was conducting its hearings. The most powerful new group to emerge was the North's "National Freight Rate Conference," which assembled in New York on September 24 to "promote a rate structure in the interest of the nation as a whole, to combat sectionalism, and to preserve the independence of the ICC."[99] Represented were the Connecticut Chamber of Commerce, the Manufacturers Association of Commerce, of Hartford, Connecticut, the Delaware Chamber of Commerce, the Illinois Chamber of Commerce, the Chicago Association of Commerce, the Indiana Chamber of Commerce, the Massachusetts Chamber of Commerce, the New England Governors Freight Rate Committee, the New England Governors Freight Rate Committee for Maine, the New England Council, the Detroit Board of Commerce, the New Hampshire Public Service Commission, the New Jersey Chamber of Commerce, the New York State Division of Commerce, the New York State Chamber of Commerce, the Commerce and Industry Association of New York, Inc., the Attorney-General of Ohio, the Ohio Chamber of Commerce, the Pennsylvania Chamber of Commerce, the Commonwealth of Pennsylvania, the Eastern Railroad Presidents Conference, and the Traffic Executives Association of the Eastern Territory.[100]

Southern congressmen attempted in October to bring some order to the disjointed action which had sprung from their enthusiasm of the preceding spring. On October 7, southern and western members met to appoint steering committees for freight rate legislation, and sat for two and one half hours while Robert E. Webb and C. E. Childe, of the BIR, and John P. Ferris, of the TVA, explained the latest issues in the rate controvery.[101] The group, called together by Senator Tom Stewart, of

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ative Oren Harris, Arkansas, HR 3172, July 7, 1943; Representative W. F. Norrell, Arkansas, HR 3183, July 8, 1943; Senator Tom Stewart, Tennessee, S J Res. 75, July 8, 1943; Senator Tom Stewart, Tennessee, S 1370, September 24, 1943; and Representative Ed Gossett, Texas, HR 3775, December 3, 1943. *Congressional Record*, 78 Cong., 1 Sess., pp. 2731, 2835, 2398, 2939, 3165, 3509, 3680-81, 3671, 4094, 4778, 7418, 7518, 7423, 7817, 10309. Representative Oren Harris, Arkansas, introduced HR 3907 on January 10, 1944, in the second session. *Congressional Record*, 78 Cong., 2 Sess., p. 23. All of these bills were sent either to the Senate Committee on Interstate Commerce, or to the House Committee on Interstate and Foreign Commerce. None were reported, and all died with the end of the 78th Congress on December 3, 1944.

[99] *Railway Age*, CXV (1943), 539-540.

[100] *Ibid.*

[101] *Ibid.*, 614.

Tennessee, formed a Joint Strategy Committee headed by Senator Stewart and Representative Lyle Boren, of Oklahoma. The senators and representatives present hoped to substitute some acceptable measure for the many that had been introduced, and press for its immediate passage.[102] Little heat and less light were generated by these maneuvers, however, for the proposed action was never pushed. All uniform rate bills died with the close of the 78th Congress on December 23, 1944. Several were reintroduced in the 79th Congress, but subsequent events relieved pressure from their passage.[103] Through all these activities, BIR Members Childe and Webb dropped every pretense of impartiality, and gave constant advice and support to the southern camp. Childe, in particular, was pressed into repeated service in the preparation of rebuttals to Official Territory arguments, and in the delivery of speeches to interested groups over the South.[104]

Congressional energies, and those of the Southern Governors Conference, were diverted in the 1942-1944 period by a fresh assault on railway rate structures by the Department of Justice. The issues introduced, involving the anti-trust laws of the nation, sent Georgia's Governor Arnall off the Governors Conference reservation, and greatly complicated the devotion of southern congressmen to rate revision. On September 27, 1942, the Justice Department instituted grand jury proceedings in Chicago looking to the initiation of an anti-trust suit against the private rate-making bureaus maintained jointly by the carriers of the nation.[105] It was charged that the conferences, bureaus, and associations of rail officials which were knit in ascending echelons to form the Association of American Railroads, constituted a nation-wide rail bureaucracy which, by nature of its organization and by its subsequent activities, had violated the Sherman Anti-Trust Law.[106]

These rate bureaus under attack are the means by which extensive collaboration in the establishment of joint rates is maintained. Few shipments in the national flow of commerce begin and end with one carrier; the normal movement is handled by several lines between origin and

[102] Atlanta *Constitution*, October 9, 1943.

[103] Uniform rate bills introduced in the 79th Congress, their sponsors, and dates of introduction were Representative Ed Gossett, Texas, HR 413, January 3, 1945; Senator Lister Hill, Alabama, S 81 and S 82, January 6, 1945; Representative Joseph R. Bryson, South Carolina, HR 1272, January 9, 1945; Representative Luther A. Johnson, Texas, HR 2041, February 7, 1945; and Representative Oren Harris, Arkansas, February 28, 1945. *Congressional Record*, 79 Cong., 1 Sess., pp. 25, 78, 148, 907, 1595.

[104] See the address of C. E. Childe to the Southern Policy Association, May 6, 1943, printed in the *Congressional Record*, 78 Cong., 1 Sess., *Appendix*, p. 2364. See also the letter of C. E. Childe to Vice-President Henry Wallace, dated November 6, 1943, printed in *ibid.*, pp. 4758-4759.

[105] Arne C. Wiprud, *Justice in Transportation: An Exposé of Monopoly Control* (New York, 1945), p. 76.

[106] *Ibid.*, pp. 76-99.

destination. The carriers work through the rate bureaus to make necessary quotations of charges to prospective shippers, and to divide joint revenues received. Rates are initiated by the carriers and go automatically into effect unless suspended within thirty days by the Interstate Commerce Commission. The Justice Department therefore alleged that the ICC's control of freight charges was only theoretical, and that unnecessarily high rate patterns are in fact the fruit of unlawful collusion among the roads, rather than the result of action by a public regulatory board. As this controversy developed, anti-trust lawyers argued that the ICC took positive action on less than one per cent of the rates filed, but Commissioner Clyde B. Aitchison, in hearings before the Senate Committee on Interstate Commerce, gave convincing proof, based on the same sources employed by the Justice Department, that 40 per cent of the rates filed receive actual consideration from the Commission. He declared that the remaining 60 per cent consisted of technical revisions, republication of tariff listings, and such items as one-day excursion reductions proposed by the roads.[107]

The railroads protested that elimination of joint rate bureaus would destroy every vestige of a "national" transportation system, and would leave vital war transport in chaotic condition. The roads were supported by Joseph B. Eastman, serving as Director of Defense Transportation, and by Secretary of War Henry Stimson. On requests from these officials, Attorney-General Francis Biddle reluctantly stopped action January 4, 1943, on the proposed suits.[108] Eastman later told a Senate Committee that

> I am wholly convinced that if the carriers of the country are to respond to the duties and obligations imposed upon them by the Interstate Commerce Act, and if the rate structure is to be reasonable, free from unjust discrimination or undue preference and prejudice, as simple and consistent as may be, reasonably stable, and sufficient for the financial needs of private ownership and operation, the carriers must be in a position to consult, confer, and deal collectively with many phases of the matter, and that while the ultimate right of individual action should be scrupuously preserved, it is desirable that such action should not be taken without prior notice to fellow carriers and shippers and an opportunity for them to express their views.[109]

War Production Board Chairman Donald M. Nelson stepped in on March 20, 1943, to issue, under provisions of the Small Business Concerns Act,

[107] *Regulation of Rate Bureaus, Conferences, and Associations, Hearings Before the Committee on Interstate Commerce, United States Senate, Seventy-Ninth Congress, Second Session, on H.R. 2536, An Act to Amend the Interstate Commerce Act With Respect to Certain Agreements Between Carriers. March 20-May 3, 1946,* pp. 1175-1182. Hereinafter cited as *Regulation of Rate Bureaus.* This 2416-page document, reporting testimony and reprinting documents in connection with the Bulwinkle Bill, the Georgia Case, and the Department of Justice suits against the railroads, constitutes this study's main primary source for these issues.

[108] *Congressional Record,* 78 Cong., 1 Sess., pp. 2840-2842.

[109] *Regulation of Rate Bureaus,* p. 1213.

a certificate exempting the roads for the duration from anti-trust action against joint rate fixing, provided they followed rulings of the ICC in regard to proper use of this privilege.[110]

Efforts were soon made in Congress to make permanent this emergency relief by executive decree. On May 17, 1943, Representative Alfred Bulwinkle, of North Carolina, introduced amendments to the Interstate Commerce Act which would give ICC-controlled activities of the rate bureaus immunity from the anti-trust laws.[111] Hearings were held on a similar bill, introduced by Senator Burton K. Wheeler, before the Senate Committee on Interstate Commerce in June and July, but they were suspended without report at the recess of the 78th Congress.[112] The controversy which was to rise over passage of the Bulwinkle Bill did not reach its height until its reintroduction in 1945 and 1947, for WPB Chairman Nelson's executive order promised to serve the same purpose until the war's end. The Department of Justice, however, continued after a brief pause its investigations, charging extreme cases of coercion by railway associations in defiance of rules guaranteeing the right to independent action by member roads of the rate bureaus. On May 21, 1943, an indictment was secured at Denver against a group of trucking concerns, and in 1944 suits were brought against railways of the western territory.

A slashing philippic against the roads delivered by Vice-President Henry Wallace to an audience at Dallas on October 20, 1943, drew national attention to debates on monopoly and transportation. Wallace traced conspiracy and collusion to meetings of bankers and rail kings at 40 Wall Street in 1932 and 1933. "Instead of responding to the recent exposé of their cartel methods by the Department of Justice," he said, and instead of "conforming to the law of competition which all business must observe, the railroads have rushed to Congress seeking special legislation to permit them to continue their illegal private rate-making practices which have been so costly to the entire nation."[113]

These were the issues with which Georgia's Ellis Arnall began May 27, 1944, his celebrated attempt to by-pass the Interstate Commerce Commission and force, through direct appeal to the Supreme Court, a revision of the nation's differential freight structure.[114] On June 20, Governor Arnall, acting under constitutional provisions permitting a state to bring original suit in the Supreme Court, filed a bill of complaint asking permanent injunction against the collection of discriminatory rates, and seeking $60,750,000 in damages to the state of Georgia, and to individual shippers

[110] *Congressional Record,* 78 Cong., 1 Sess., pp. 2840-2842.
[111] *Ibid.,* p. 4562.
[112] *Railway Age,* CXV (1943), 9.
[113] Henry Wallace, address at Dallas, Texas, October 20, 1943, printed in the *Congressional Record,* 78 Cong., 1 Sess., pp. 8610-8613.
[114] *Railway Age,* CXVI (1944), 1090.

therein.[115] The Georgia case grew from the Department of Justice charges, and the claims for financial reparations were based on the treble damages provisions of the anti-trust laws.[116] The Department on July 5 sent agents to the Atlanta offices of the Southern Freight Association, rate-making bureau for the South, to collect evidence in support of the state's complaint.[117] The Association permitted investigators to photograph some 16,000 letters and documents, which later became the basis for Georgia's arguments.[118]

Governor Arnall stood alone, however in the South, and before 1947 no southern governor supported his stand. The major shipper groups of the area urged passage of the Bulwinkle Bill, which would destroy the legal basis of the state's plea.[119] Even Georgia's Public Service Commission, headed by Walter R. McDonald, failed to go along with its Governor. When the Southeastern Association of Railroad and Utilities Commissioners was later polled for opinion on the Bulwinkle Bill, members in all but three states voted for its passage. The three, Georgia, Alabama, and Tennessee, took no position.[120]

On November 11, 1944, the Supreme Court ordered defendant railroads to show cause why the Georgia request to file original suit should not be granted.[121] Oral arguments on this point were made January 2, 1945, with Governor Arnall coming in person to present his case. Department of Justice Attorney Arne C. Wiprud, taking part as a friend of the court, was at his elbow. At this stage, neither the railroods nor the ICC had shown too much concern over the Georgia suit, for they felt, apparently, that the Supreme Court would interpret the case as a rate matter, and order the state to make proper appeal to the Commission.[122] Governor Arnall argued, however, that the basic issue in his complaint was illegal conspiracy, not the legality or reasonableness of railroad rates. The Supreme Court recognized this plea, and by a five to four decision[123] assumed jurisdiction in the case on March 26, 1945. Dumbfounded, the roads asked rehearing and reconsideration of the motion, but their request was denied

[115] *Motion for Leave to File Bill of Complaint, The State of Georgia, Complainant versus The Pennsylvania Railroad Company, et al., Defendants* (Fulton County, Georgia, 1944), p. 15.

[116] *Ibid.*

[117] Statement of J. G. Kerr, Chairman of the Southern Freight Association, *Regulation of Rate Bureaus,* pp. 1250-1251.

[118] *Ibid.,* p. 1259.

[119] Division of opinion within the South over the Georgia Case and the Bulwinkle Bill is documented and discussed in Chapter VI.

[120] *Regulation of Rate Bureaus,* p. 27.

[121] *Railway Age,* CXVII (1944), 934.

[122] Birmingham *News,* February 23, 1947.

[123] *Railway Age,* CXVIII (1945), 584. The majority decision was supported by Justices William O. Douglas, Hugo Black, Frank Murphy, Stanley Reed, and Wiley Rutledge. Minority positions were taken by Chief Justice Harlan F. Stone, and Justices Owen J. Roberts, Felix Frankfurter, and Robert H. Jackson.

on April 22.[124] The roads then filed requests for a bill of particulars to support Georgia's "epithetical conclusions of law unsupported by any sufficient allegations of fact."[125]

Governor Arnall's independent action, flooding him with personal publicity, did not sit too well with the Southern Governors. His pointed absence from the Conference meetings in 1945 at Mobile and New Orleans, and his disparaging references to the willingness of the other governors to wait patiently through years of ICC inaction, did not improve his relations with fellow executives. His suit, however, gave final resolution to the intricate political counterpoint with which the South had advanced its cause. Swirling through the other political currents tugging at its foundations, the ICC saw in his case grave threat of lost prerogative. "Perhaps," as one writer put it, "the apples were ready to fall from the tree anyway. Perhaps not. The Supreme Court action gave the tree a strong shake. The pippins began to drop and they were all for the Southern governors' basket."[126]

The Commission, crowning six years of complicated litigation with a final burst of energy, reported its decision in the Class Rate Investigation on May 15, 1945. Reversing the major precedents and reinterpreting generations of rate history, it ordered immediate establishment of a uniform classification system in all areas east of the Rocky Mountains, and provided an interim rate settlement which would be followed by uniform class rates.[127] Virtually every plank of the southern platform was adopted in the majority report. If the decision becomes effective, the Southern Governors Conference was advised, "it will be a complete victory for the South and the West. . . ."[128]

[124] *Ibid.*, 767.
[125] *Ibid.*, 992.
[126] Birmingham *News*, February 23, 1947.
[127] *Class Rate Investigation*, pp. 270-271.
[128] Report of J. V. Norman to the Southern Governors Conference, *Transcript of proceedings at business meetings held at Admiral Semmes Hotel, Mobile, Alabama, July 20 and 21, 1945, Originial Record*, p. 10.

CHAPTER V

THE CLASS RATE INVESTIGATION

Technical interpretation of evidence and decision in the Class Rate Investigation is beyond the scope of this study and the knowledge of its author. Pertinent, however, is the notable accumulation of fact gathered by ICC statisticians in their survey of the South's present economy, and the reaction of various groups within the South to these disclosures.

Commission studies and exhibits introduced in the hearings transformed from speculation to fact discussions of the extent to which the South is "drained" of its raw materials by the North. By interpretation based on figures for actual carload freight movements on May 27 and September 23, 1942, reasonably accurate conclusions on the nature of interterritorial trade may be drawn. On the two days examined, 23,512 carloads moved exclusively within the South; 10,556 entered the South from other territories, of which 7,008 were from Official; and 18,649 carloads were sent from the South to other territories, including 15,989 to Official. The Southern Territory's traffic to and from other territories was thus heavier than intraterritorial movement, the former amounting to 124.2 per cent of the latter.[1]

In Official Territory the aggregate carload movement within the area was 111,914. Entering Official from outlying regions were 33,693 carloads, and 20,215 were exported from the region. Intraterritorial traffic was thus paramount in the territory, since movements to and from the outside were only 48.3 per cent of shipments wholly within Official.[2]

It should here be noted that the terminology of international trade may lend to these statistics inaccurate meaning and invalid conclusions. Although a glance at the above figures would indicate a "favorable" balance of trade for Southern Territory, since exports were greater than imports, the money value of these movements would prove the reverse. Intraterritorial traffic has quite a different meaning when class rate movements are considered apart from shipments on commodity rates.

The ICC found that Southern intraterritorial movements included only 423 carloads on class rates, while Official Territory shipped 883 class rated loads into the South. Returning to Official from the Southern Territory were only 144 carloads. Hence, the export of class-rated traffic from Southern to Official was only 16 per cent of movements in the reverse direction. Southern consumers imported, moreover, class rated goods total-

[1] *Class Rate Investigation*, p. 131.
[2] *Ibid.*

ing 209 per cent of the amount originated for their use within Southern Territory.[3]

But this is still a cold, numerical view of sealed cars. Where did the South sell its scrap iron and fertilizer, green hides and eggs? In an effort to find out, the Commission divided shipments within the South and between the South and Official, into five major groups: (1) products of agriculture, (2) animals and animal products, (3) products of mines, (4) products of forests, and (5) manufactures and miscellaneous products. The 39,501 total of carloads in Southern intraterritorial movement, and in movement from Southern to Official, were separated into subdivisions under these headings. A clearer view is thus afforded of the extent to which the South is actually suffering the loss of raw products which might be utilized in home manufacture. The results of these studies are summarized in Table IX.[4]

Grand totals of the listings above show that 15,989 cars, or 37.9 per cent, of the traffic originated in Southern terminated in Official Territory; 23,512 cars, or 55.8 per cent, remained in the South. The South consumed 55.3 per cent of the products of agriculture it originated, 38.6 per cent of its animals and products, 53.4 per cent of its products of mines, 64 per cent of its forest products, and 55.2 per cent of its manufactured and miscellaneous goods. It shipped to Official Territory 38.7 per cent of its products of agriculture, 56.9 per cent of its animals and products, 43.9 per cent of its products of mines, 30.1 per cent of its forest products, and 30.9 per cent of its manufactures.

Further study of these figures indicates that over 40 per cent of all shipments sent from the South to the North consisted of coal and coke. Railway spokesmen argued that the South's excess production of coal in Alabama, Tennessee, Kentucky, and southwest Virginia, plus the fact that nature happened to make the North colder than the South, should remove this traffic from the category of "raw materials drained from the area."[5] They further contended that the major movements of citrus fruits, fresh vegetables, and livestock shown were the result of vigorous effort by southern producers intent on expansion of sales to the populous North. A. R. Smith, Vice-President of the Louisville and Nashville Railroad Company, could find only 2,581 carloads, or 16.142 per cent of the total northbound movements, which could properly be classified as "raw materials."[6] The

[3] Percentage figures based on *ibid.*

[4] *Ibid.*, p. 210b.

[5] A. R. Smith, *The Southern Freight Rate Matter: Some Things That Are Not True About the South's Freight Rate Structure and Its Effect on the Development of Southern Industry* (Louisville, 1943), pp. 13-14.

[6] *Ibid.*, pp. 19-20. Smith, a railroad executive, selected for his list of "raw materials" the following items: cotton, linters, noils, etc.; wool; green hides and leather; iron ore; other ores and concentrates; sand, gravel, and stone; crude petroleum; products of mines; logs, poles, fuel and pulpwood; resin, turpentine, and crude rubber; scrap iron and steel; vegetable oils; and pig iron.

TABLE IX

TERRITORIAL MOVEMENT OF CARLOAD FREIGHT ON MAY 27 AND SEPTEMBER 23, 1942

Commodity	Originating in the South and Consigned to: Official — Number of Cars	Official — Per cent of Cars Originated in the South	Southern — Number of Cars	Southern — Per cent of Cars Originated in the South
Group I—Products of Agriculture (C.L.)				
Grain	14	10.9	107	83.6
Processed grain, cereal, mill products	5	2.6	181	94.8
Cotton, linters, noils, etc.	128	13.0	835	84.7
Cottonseed, vegetable meal, and cake	22	5.7	334	86.3
Citrus fruits	217	75.6	64	22.3
Other fresh fruits	111	68.5	30	18.5
Potatoes, other than sweet	341	72.2	108	22.9
Other fresh vegetables	212	64.2	72	21.8
Dried fruits and vegetables	7	43.8	4	25.0
Agricultural products	299	54.6	206	37.6
Total Products of Agriculture	1,356	38.7	1,941	55.3
Group II—Animals and Products (C.L.)				
Livestock and live poultry	192	65.1	88	29.8
Packing-house products, dressed poultry	27	34.6	50	64.1
Eggs, butter, cheese	2	10.5	15	78.9
Wool	13	81.3	3	18.7
Green hides and leather	29	90.6	—	—
Animal products	20	35.1	36	63.2
Total Animals and Products	283	56.9	192	38.6
Group III—Products of Mines (C.L.)				
Coal and coke	6,926	58.2	4,607	38.7
Iron ore	1	.3	330	99.7
Other ore and concentrates	53	23.7	168	75.0
Sand, gravel, and stone	208	4.7	4,187	93.6
Crude petroleum	1,195	79.4	310	20.6
Asphalt	16	16.0	75	75.0
Products of mines	465	28.2	1,106	67.1
Total Products of Mines	8,864	43.9	10,783	53.4
Group IV—Products of Forests (C.L.)				
Logs, poles, fuel, pulpwood	177	5.9	2,706	90.0
Lumber, cooperage, etc.	2,031	46.2	2,064	47.0
Resin, turpentine, crude rubber	63	58.9	21	19.6
Products of forests	37	23.0	118	73.3
Total Products of Forests	2,308	30.1	4,909	64.0
Group V—Manufactures and Miscellaneous				
Refined petroleum and products	517	34.4	905	60.2
Vegetable oils	64	49.2	55	42.3

TABLE IX (Continued)

Commodity	Originating in the South and Consigned to:			
	Official		Southern	
	Number of Cars	Per cent of Cars Originated in the South	Number of Cars	Per cent of Cars Originated in the South
Sugar, syrup, molasses	122	43.4	134	47.7
Pig iron, iron, steel (6th class)	40	17.2	185	79.4
Railway material, iron and steel	14	23.0	35	57.4
Iron and steel pipe, fittings, wire, nails	72	27.1	75	28.2
Iron and steel (5th class)	50	14.5	193	55.9
Other processed metals	47	94.0	3	6.0
Machinery and boilers	16	24.2	35	53.0
Cement	11	2.0	497	89.4
Brick and building tile	98	34.6	168	59.4
Lime and plaster	6	9.5	55	87.3
Sewer pipe and drain tile, not metal	13	14.4	69	76.7
Agricultural implements, tractors, etc.	4	14.8	12	44.4
Autos, trucks, and parts	68	39.3	62	35.8
Furniture	173	51.6	74	22.1
Beverages	38	33.0	23	20.0
Fertilizers	47	8.8	456	85.7
Newsprint paper	—	—	8	100.0
Printing and wrapping paper, paper bags	104	60.1	51	29.5
Fabrics, bagging, and bags	211	49.3	145	33.9
Canned food products	62	30.2	127	62.0
Furnace slag	—	—	513	97.0
Scrap iron and scrap steel	145	46.3	166	53.0
Building materials	203	44.9	155	34.3
Glass products	93	63.7	22	15.1
Other manufactures	167	38.0	191	43.5
Manufactures and miscellaneous	793	31.7	1,273	51.0
Total Manufactures and Miscellaneous	3,178	30.9	5,687	55.2
GRAND TOTAL, CARLOAD TRAFFIC	15,989	37.9	23,512	55.8

SOURCE: Exhibit No. 194, *ICC Docket 28300. Class Rate Investigation*, p. 210b.

remaining shipments were of processed foods, finished lumber, and other materials which had fed southern plants before beginning their trip to the North.

Statistical juggling of this nature was performed by all parties to the controversy, of course, and results varied according to the conclusions desired.[7] Critics of the rate structure, however, seem to be arguing against themselves when they protest the large movements to Official Territory.

[7] See, for instance, T. M. Henderson, *The Southern Class Rate Adjustment; Issues and Rates Involved; Rates Not Involved; Comments and Criticisms* (Nashville, 1943), pp. 17-19.

One of their basic demands is access to the rich markets of the North, yet their extreme spokesmen have often objected violently to progress in that very direction. Here sectionalism is twisted by nationalistic aberration, complicating development of a truly national system of commercial exchange. On the other hand, limited use of the same arguments by cooler heads leads to very pertinent observations. It is conceded that southern industry furnishes a considerable quantity of semi-finished goods to northern producers for final manufacture. The relatively large movements of class-rated goods from North to South supports the contention that some southern industry serves only as a "colonial appendage" to the imperial North. "A thousand dollars worth of coal or lumber," observed the TVA,

> is as good in exchange as a thousand dollars worth of automobiles or typewriters. But on the average a thousand men or a million dollar investment can produce and sell a much greater value of automobiles than of coal, and the sale of coal depletes or uses up irreplaceable resources in much greater measure than the sale of manufactured goods. Manufactures, and especially high-order manufactures, pay much greater rewards for the investment of labor or money than raw materials and low-grade processed goods do.[8]

It was by another exercise in regional economic analysis, however, that the ICC reached the conclusions which probably controlled its decision in the Class Rate Investigation. Before uniform rates could be established, substantial proof had to be offered showing that the cost to carriers of providing transportation service is as low in the South as in the North This knotty problem was complicated by the accounting methods of the railroads, which failed to relate normal constant and out-of-pocket costs to the revenue derived from each type of shipment.[9] The Commission had made the cautious assumption in the Southern Governors Case that cost of transport in the South did not justify higher rate levels.[10] Most ICC precedent and decision, however, rested on the assumption that the South's low traffic density was full and sufficient evidence of higher southern operating costs. In the Class Rate Investigation, an attempt was made to develop a more adequate record for this unaccountably neglected issue. Dr. Ford K. Edwards, cost analyst for the Commission, applied involved methods of statistical sampling and interpretation to known factors in railway profit and loss, and reached tentative conclusions on actual costs in the regions.[11] Accepting his findings as substantially correct, the Commission reported that "there is little significant difference in the cost of furnishing transportation in the South as compared to the East, excluding

[8] *Third TVA Report*, p. 23.
[9] See *supra*, pp. 44-45.
[10] See *supra*, p. 47.
[11] Ford K. Edwards, ed., *Rail Freight Service Costs in the Various Rate Territories of the United States, Senate Document 63*, 78 Cong., 1 Sess. (1943), *passim*. See also *Class Rate Investigation*, pp. 138-161.

the Pocahontas territory."[12] Figures for 1939, and for the period from 1930 to 1939, showed that costs as a whole in the South were as low, or lower, than Official costs. For the 1937 to 1941 period, similar estimates showed "substantially lower" costs in the South. Computations including the Pocahontas roads with the other Official carriers showed costs in 1939 that were 3 to 6 per cent higher in the South than in the East. This figure ran between 6 and 8 per cent in the 1930-1939 period, but no differential appeared in figures on the 1937-1941 survey.[13] In the territories of the West, costs for 1939, and 1930-1939, were estimated at 5 to 10 per cent higher than in the East, excluding Pocahontas. In studies of the relative territorial costs for less-than-carload traffic, operation in the East was 5 to 8 per cent more expensive than in the South.[14]

In accepting these statistics as a basis for decision, the ICC reasoned that low terminal costs in the South more than offset Eastern savings from high traffic density. At a point, it was illustrated, the concentrated traffic of the Northeast ceases to follow the mass production principle of decreasing unit cost, and additional business begins to increase drastically the expenses of handling and equipment maintenance. In the South, moreover, savings are effected in lower wages (an average of $1,753 as compared with $1,925), in a lower ratio of empty to loaded car-miles, in more miles actually run per hour per train and engine employee in freight service, and in more transportation service car-miles per employee.[15] The southern carriers recorded heated denials of the facts and conclusions in these studies, but the ICC ruled that they were sufficiently accurate and

[12] *Class Rate Investigation*, p. 160. The "Pocahontas" region is that part of Official Territory in the coal belts of the Virginias. This highly specialized coal traffic is the most profitable in the nation, because of low expenses incurred in handling one chief commodity. Profits here are so high that the region was represented by separate statistics, so that a more accurate presentation of general Official costs would be available.

[13] *Ibid.*, pp. 160-161, 185. The earnings of roads in the South, compared with those of the East, supported these cost conclusions. The rate of return between 1936 and 1943 for the carriers, based on net railway operating income, reported investment in property used for transportation service, plus cash and supplies, were shown to be as follows:

Year	Rate of Return (Per cent) Southern Territory	Rate of Return (Per cent) Official Territory
1936	2.52	2.67
1937	2.35	2.27
1938	1.90	1.26
1939	2.50	2.34
1940	2.57	2.66
1941	4.24	3.62
Average, 1936-1941	2.69	2.47
1942	6.51	4.90
Average, 1936-1942	3.26	2.82
1943	5.73	4.32

[14] *Ibid.*, p. 161.
[15] *Ibid.*, p. 179.

reliable to upset its long acceptance of contrasting views.[16] The failure of carrier experts to locate any significant fallacy in the Edwards Cost Studies was the weak link in their chain of argument.

The railway defendants based their case on the general view that class rates fixed by the ICC through years of "thorough investigation and earnest efforts," were serving well the needs of national commerce. Proof of the unlawfulness of these rates, they said, must rest on proof of permanently changed conditions, which proof in their view had not been established.[17] Official carriers called attention to their unusual dependence on class rates for revenue,[18] and noted that shippers in their region had expressed no dissatisfaction with their freight costs. While opposing all change, they suggested that if rates in other areas were brought to Official levels, they would not object to joining such a system if future joint revenues were equally divided, and if a common classification were established.[19] The southern roads, fearing the loss of revenue that findings of equal costs seemed to promise, held to their contention that transportation conditions in their territory required class rates on a higher level than those in Official Territory.

Shippers in the Northeast protested that the ICC would be exceeding its authority if it ruled on evidence showing that class rate changes were necessary for stimulation of industry in the South and Southwest. The effect of such a policy on northern communities, they said, would be disastrous, for already movements of business to the South threatened upset to the northern economy.[20] If equalization were to be accomplished by lower southern class rate levels, the South would actually be placed in a preferential position because of its low commodity rates. If uniformity were sought by increasing Official rates, then northern industry would be unduly burdened to give parity to a small portion of southern industry.[21] The northern spokesmen emphasized the fact that only nine actual shippers of the South had come forward personally to give testimony, and charged that the southern agitation was rooted in political rather than economic conditions. Of the nine shipper witnesses, moreover, six testified that they were competing successfully for business within Official Territory.[22]

Shippers in the South who opposed uniformity argued that their rates in no way retarded southern industrial progress, and warned that lower

[16] *Ibid.*, pp. 262-264.
[17] *Ibid.*, p. 122.
[18] *Ibid.*, p. 210b.
[19] *Ibid.*, p. 122.
[20] *Ibid.*, pp. 124-125.
[21] *Ibid.*, p. 211.
[22] *Ibid.*, pp. 187-189. The nine shippers included a manufacturer of washboards at Raleigh; the operator of a tanning plant at Andrews, South Carolina; a wine maker of Atlanta; a producer of macaroni products at Memphis; a furniture maker of Birmingham; a producer of glass bottles at Chattanooga; a cucumber pickle producer at Faison, North Carolina; a manufacturer of peanut products at Columbus, Georgia; and a manufacturer of grading machinery at Toccoa, Georgia, and Vicksburg, Mississippi.

class rates would so reduce the revenues of the southern carriers that higher commodity rates would be required. No such burden, they said, was deserved by the existing industry of the South.[23]

Three somewhat different ends were sought by the interests who demanded revision of class rates. One group wanted a single and uniform level of class rates throughout the investigated territory; another asked the extension of Official rates to certain additional states or areas; and the third asked uniform levels in all areas east of the Mississippi River.[24] In the first group were public bodies and shippers of the Southwest, and many such associations in the Western Trunk Line Territory.[25] States and city groups at the edge of Official Territory, including Kentucky,[26] Iowa, Minnesota, and groups in Topeka, Wichita, and St. Louis, fell in the second group.[27] Southern Territory members of the Governors Conference made the third appeal, with the support of varied factions of their area.[28] Florida added to this testimony an additional plea for removal of the "L-2" scale of arbitraries which were added to shipments down the length of her territory.[29]

The Southern Governors based their case on two main premises: (1) the existing rate structure was and had been an important factor in retarding the industrial growth of the South; and (2) the Edwards Cost Studies removed the last rational basis for the claim that transportation conditions in the South were such that higher rates were required for the support of the southern carriers.[30] In the latter connection, Governor Chauncey Sparks, of Alabama, estimated that a 3 per cent increase in southern commodity rates would suffice to recapture for the southern railroads all the revenue which would be lost by reduction of class rates to Official levels.[31] The Governors Conference further advanced the belief that class rate relief would initiate no appreciable transfer of industry from North to South, but rather would benefit the nation as a whole by permitting the southern area to absorb its share of future growth.[32] In no case was the failure of an industry to locate in the South proved to be a result of high freight rates.[33] Extensive evidence was recorded, however, illustrating unreasonable and prejudicial conditions. A TVA witness showed, for instance, that while cottonseed rates to the North were only 107 per cent of Official rates, oleomargarine and salad oil processed from this commodity were charged 137 per cent of Official rates. Woodpulp rode 109 per cent rates,

[23] *Ibid.*, pp. 125-126.
[24] *Ibid.*, p. 122.
[25] *Ibid.*
[26] *Ibid.*, p. 208.
[27] *Ibid.*, p. 123.
[28] *Ibid.*
[29] *Ibid.*, p. 195.
[30] *Ibid.*, p. 186.
[31] Chauncey Sparks, *Address of Chauncey Sparks, Governor of Alabama, Before Annual Meeting of Motor Vehicle Association of Alabama, Inc.* (Birmingham, July 12, 1946), p. 6.
[32] *Class Rate Investigation,* p. 186.
[33] *Ibid.*, p. 193.

while newsprint was charged 159 per cent. Asphalt petroleum had a parity rate, but asphaltic paint was charged 153 per cent.[34]

The Governors Conference also emphasized the need for sales in the Northeast if major new industries were to have a chance for growth in the South. Here the commodity and class parties launched a chicken-or-the-egg argument over which must come first, the industry or the favorable rate. John P. Ferris, of the TVA, pointed out that

> no Southern hotel manager 10 years ago would have chanced buying Southern-made frozen foods. There were in the South on big bulk distributors of frozen foods to buy the products of small plants, classify them in accordance with quality, and develop specific markets for each kind of product. But after the newer Southern producers of frozen food have obtained a lift by selling them in the Northeast and Midwest, Southern markets gradually opened up for them.[35]

Such concern with "unborn industries," and with plants in weak, beginning stages, was one reason that shipper support of the Governors Conference was not stronger. The South's future, argued the complainants, lay in the encouragement of these new and diversified manufactures.

This delicate conception of a South pregnant with new industries, waiting on the ICC delivery table for their birth, was ridiculed by defendants in the case. "Freight rates do not exist ahead of industry," declared Alvin Vogtle, "they follow it. They are made in response to demand. They are made to move the business—whatever business is offered—and they are made, usually, at whatever level it takes to accomplish that result."[36] A. J. Ribe supported this view, writing that

> The North has had such a head start on the South that unless any new industry in the South is a branch of national industry already established, it must "crawl" in its home state before it can "walk" to adjoining states, and "walk" to adjoining states before it can "run" to distant markets. Until the South has its industry "walking" and "running" the present rate structure is best suited for its needs.[37]

In the sale value of a given article, freight rates, of course, are a very small fraction, and the differential between the territories is even smaller. But a manufacturer of electric water heaters at Chattanooga, competing at Peoria, Illinois, over equal distances with an Official Territory producer, pays a differential of 57.75 cents over his rival's rate. Although his heater sells for $40.86, the rate differential, 1.4 per cent of the total value, amounts to 14 per cent of the profit. Similarly, a producer of automotive storage

[34] *Ibid.*, pp. 172-173.

[35] John P. Ferris, *Southern Freight Rates,* reprint from the Birmingham *Age-Herald,* November 3, 1944.

[36] Alvin W. Vogtle, *The South Is a Beneficiary Not a Victim of Its Freight Rate System,* speech to the Nashville Rotary Club (November 2, 1943), p. 8.

[37] A. J. Ribe, *Kangaroos in the Freight Rates,* reprint from *Nation's Business* (February, 1944), p. 2.

batteries at Jacksonville, Florida, suffers a rate differential which is 44 per cent of his profits in sales at Washington, D. C. The Governors Conference said that many such cases could be cited, where a small differential is large enough to chip an appreciable amount off net profits.[38] Not only unborn industries are affected by such a problem, but concerns already doing business in the South may be influenced by this burden in their decision to seek more favorable locations. Walter R. McDonald stated that the Virginia Dare Winery, of Albany, moved from Georgia's orchards and vineyards because of the high cost of freight to its big consuming territory.[39]

Simple logic, unsupported by any technical knowledge of the issues, seemed to lie with the Governors Conference. Even granting commodity shippers claims of a "balance" between class and commodity rates, Governor Sparks found it "strange, if the one does actually compensate for the other, that such a roundabout means is needed to bring justice."[40]

The Interstate Commerce Commission, in accord with this reasoning, reported on May 15, 1945, that class rates east of the Rocky Mountains were "unjust and unreasonable" and in violation of the Interstate Commerce Act.[41] The Commission acted on a record which included 6,000 pages of testimony and 10,000 to 15,000 pages of rate and statistical computations. It reinforced its decision by noting the patient, thorough, six-year-long investigation, and declared that the full intention of Congress in the amendments of 1940 was to end territorial discrimination.[42] Seven members of the Commission ruled for the complainants, and two more concurred in part.

The ICC majority concluded that the class rate structure "reacts to the disadvantage" of the South and West, and "tends to restrict the growth and expansion" of business in those regions.[43] Immediate establishment of a uniform classification system in the regions considered was ordered,[44] and the ultimate institution of uniform class rates on a specified scale was

[38] *Third TVA Report,* pp. 50-51.

[39] Walter R. McDonald, *Equalization of Freight Rates,* speech to the American Industrial Development Council, U. S. Chamber of Commerce (Washington, March 19, 1946), p. 11.

[40] Chauncey Sparks, *Address of Chauncey Sparks, Governor of Alabama, Before Annual Meeting of Motor Vehicle Association of Alabama, Inc.* (Birmingham, July 12, 1946), p. 5.

[41] *Class Rate Investigation,* pp. 270-271.

[42] *Ibid.,* pp. 258-262.

[43] *Ibid.,* p. 265.

[44] *Ibid.,* pp. 63-64. The Commission offered the nation's railroads a ninety-day period in which they might decide whether or not they would reclassify themselves the nation's freight. Otherwise the ICC would assume the job. The roads agreed to perform the task, but subsequent injunctions against the whole ICC decision delayed action until August, 1947. Thirty multiples or divisions of First Class rates were ordered for the standard classes, with the classification percentages of 100 to be set as follows: 400, 300, 250, 200, 175, 150, 125, 100, 92.5, 85, 77.5, 70, 65, 60, 55, 50, 45, 40, 37.5, 35, 32.5, 30, 27.5, 25, 22.5, 20, 17.5, 16, 14.5, and 13.

planned.[45] Since uniform rates could not be fixed before the new classification was published, an interim rate adjustment for immediate application was provided. This temporary change ordered Official class rates raised 10 per cent, and class rates in Southern, Southwestern, and Western Trunk Line lowered 10 per cent.[46]

The seven commissioners who supported this settlement were John L. Rogers, Chairman, of Tennessee; J. Monroe Johnson, of South Carolina; Clyde B. Aitchison, of Oregon; William E. Lee, of Idaho; Carroll Miller, of Pennsylvania; Walter M. Splawn, of Texas; and J. Haden Alldredge, of Alabama. All but Commissioner Miller, it will be noted, come from the South and West. Commissioners Charles D. Mahaffie, of the District of Columbia, and William J. Patterson, of Wisconsin, concurred in part; while Commissioners Claude R. Porter, of Iowa, and George M. Barnard, of Indiana, dissented.

Commissioners Patterson and Mahaffie agreed generally with the findings of the majority but expressed doubt over the wisdom of making during wartime the extensive readjustments proposed. Prescription of ultimate rates on a classification not in existence, said Patterson, is premature.[47] Mahaffie wondered if the idea of uniformity was so important that "the country should be required to incur the expense" of achieving such an end.[48]

Commissioner Porter, who wrote the chief dissenting opinion, declared flatly that "unbiased consideration" of the evidence showed that

> the class-rate adjustment here before us has had no appreciable effect, one way or the other, upon the industrial or economic development of the South or the West, and that not a single shipper, nor any particular class of shippers, nor any particular territory, has suffered injury by reason of that adjustment.[49]
>
> Either this Commission has been grossly misinformed," he said, "by dozens of sworn witnesses in the last half century, or this cost study [the rock on which the majority decision was founded] is practically worthless for the purpose of fixing rates."[50]

He criticized the majority for raising Official rates when no evidence proving they were too low had been offered; and pointed out further that acceptance of southern arguments that class rate decision would have no bearing on commodity and exception rates was "playing the proverbial ostrich and should deceive no one."[51] He admitted the need for smaller steps in class rate levels between the territories, but indicted the decision for its "one-sided and inadequate statement of a number of the important

[45] *Ibid.*, pp. 270-271.
[46] *Ibid.*, pp. 272-273.
[47] *Ibid.*, p. 277.
[48] *Ibid.*
[49] *Ibid.*, pp. 288-289.
[50] *Ibid.*, p. 285.
[51] *Ibid.*, p. 284.

facts." Even if the findings of the Commission report were correct, he said, the interim relief decreed was thus below that to which the South and West were entitled. He argued that a permanent rate basis should be fixed immediately, rather than waiting for uniform classification which "in my opinion will not be realized for at least another 10 years."[52]

Interpretation of the majority settlement should include notice of the part Alabama's Commissioner J. Haden Alldredge played in reaching the decision. "In my opinion," said the Southern Governors' attorney, "the South will be eternally grateful to Commissioner Alldredge. He has worked night and day on this proposition, and I doubt very much whether, had it not been for Commissioner Alldredge, we ever could have secured this decision."[53] Although somewhat prejudicial to the ICC's reputation for impartiality, this lawyer's view of his friend on the court is supported by study of the Commissioner's pioneer work in southern rate history. His service with the Alabama Public Service Commission, and his authorship of the remarkably influential TVA reports of 1937 and 1939, sent him to the ICC thoroughly familiar with the South's complaints.[54] His confirmation by the Senate was questioned during hearings on his appointment because of his well-known views.[55] Once approved, he immediately assumed, with Commissioners Splawn, of Texas, and Aitchison, of Oregon, direction of hearings in the Class Rate Investigation.

Commissioner Alldredge's position suggests more general comment on the personal predilections of ICC members in the interterritorial rate squabble. Notice has been taken of the coincidence of sectional background with the division of Commission opinion in the two reports surveyed. Care should be taken in stressing too much the influence of regional bias on Commission actions. Throughout its sixty-year history, the ICC has won notable praise from shippers, railroad officials, and politicians for the high and scholarly standard of its independent actions. Probably no other quasi-judicial, administrative agency of the government has enjoyed such general freedom from criticism. The fact cannot be ignored, however, that before the southern campaign began, of the forty-one men who had served on the ICC since its creation, only five had come from Southern Territory. At this time, in 1933, twenty-four members had been appointed from Official, and twelve from the territories of the West.[56] These facts

[52] *Ibid.*, p. 278.

[53] Southern Governors Conference, *Transcript of proceedings at business meetings held at Admiral Semmes Hotel, Mobile, Alabama, July 20 and 21, 1945,* p. 18.

[54] John P. Ferris, *ibid.*, p. 28.

[55] New York *Times,* February 10, March 2, 1939.

[56] North Carolina Traffic League, *Data and Memorandum for Consideration by President Roosevelt in His Appointments to Membership on the Interstate Commerce Commission* (Charlotte, February 1, 1933), pp. 1-3. By states, appointments to the Commission between 1887 and 1933 were apportioned as follows: Alabama, two; Georgia, one; Kentucky, one; Tennessee, one; District of Columbia, three; Illinois, four; Indiana, one; Massachusetts, two; Michigan, one; New Jersey, three; New

are surely associated in some degree with the failure of the Commission to act sooner with regard to needed revision of southern rates. Of the eight new Commissioners chosen between 1933 and 1945, four were from the South and one from the West.[57] In 1933, six members from Official Territory sat on the Commission, but by the time of the decision in the Southern Governors Case, this majority had shifted to six for the South and West. When that controversy was decided, the trade magazine *Railway Age* accused the group of "making a decision plainly intended to placate the most politicians possible."[58] If such was then the motivation of the Commission, a southern and western majority of seven in 1945 would have made even easier the victory of sectional bias in settlement of the Class Rate Investigation. In both decisions, however, Commissioner Claude R. Porter, of Iowa, ruled on the side of Official interests, and in the last case, Commissioner Carroll Miller, of Pennsylvania, voted with the majority for the South and West. Commissioner William B. Patterson, of Wisconsin, is tabulated with the members from Official, since the major industries of his divided state lie within Official Territory. These deviations from regional vote patterns, however, scarcely obviate the observations suggested by ICC members' reaction to the high political winds in which they labored.

Further light on the Commission's momentous change of opinion is apparent in study of recent growth and extension of all Federal executive power. Through most of its history, the ICC leaned more heavily on its judicial functions than on use of its powers to seek and investigate complaints without appeal from some injured party. Initiation of new policies was generally left to the carriers, and then the Commission ruled as to their reasonableness.[59] Litigation was as a rule handled outside the public eye, and was usually restricted to contests between wealthy shipper groups who could afford expensive professional representation in rate arguments. Any action, beyond technical readjustments, which might have encroached on national policy-making levels risked reversal through the strict interpretations of the old Supreme Court. New Deal days, however, brought a new range of authority to a Commission including some men whose serv-

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York, four; Vermont, three; Virginia, one; Wisconsin, two; California, two; Colorado, one; Idaho, one; Iowa, four; Missouri, one; Oklahoma, one; Oregon, one; and Washington, one.

[57] The eight new members appointed between 1933 and 1945 were: John L. Rodgers, of Tennessee; Walter M. Splawn, of Texas; J. Haden Alldredge, of Alabama; J. Monroe Johnson, of South Carolina; Marion M. Caskie, of Alabama; Carroll Miller, of Pennsylvania; William J. Patterson, of Wisconsin; and George M. Barnard, of Indiana.

[58] *Railway Age,* CVII (1939), 876.

[59] Truman C. Bigham, "The Cost Standard for Public Utility Rate Levels," *Southern Economic Journal,* V (1939), 277. For this view, Professor Bigham relies on the recent definitive study of the ICC by I. L. Sharfman.

ice dated to the period of the First World War.[60] Long protected from the public eye by the extreme complexity of its duties, the Commission was slow to realize, as a *Fortune* quotation put it, that "things are more constitutional than they used to be."[61]

Whether sectionalism or inertia was the source of its delay in discovering "unreasonable and unduly prejudicial" features in the southern rate structure, the Commission faced immediate challenge when it delivered its broad-gauge opinion in the Class Rate Investigation. *Railway Age* editors launched into a bitter jeremiad on the power of governments in general when they reported the decision. "The modern state," ran their lament, "has forgotten that its proper function is that of soldier, policeman, judge, jailer, and hangman—and is everywhere invading the realm of economic activity."[62] The Commission was indicted for making rates on "traffic which does not exist and for which there is no concrete and genuine economic demand"; and the report was labeled "just another instance of political pretension to omniscience and ambition to omnipotence."

Nursing similar views, fifteen northern states and thirty-three railroads journeyed to the federal courts and succeeded in blocking for two years application of the Commission's orders.[63] It was not until May 12, 1947, that the Supreme Court upheld by a seven to two decision the ICC's ruling. Justice William O. Douglas, who wrote the majority opinion, agreed that

[60] Commissioner Clyde B. Aitchison, oldest member in ICC history in point of service, was appointed in 1918.

[61] "Freight Rate Battle," *Fortune*, XXX (October, 1944), 193.

[62] *Railway Age*, CXVIII (1945), 967.

[63] Some measure of northern determination to set aside the ICC orders is illustrated by the $100,000 appropriation voted by the New York legislature for the hire of lawyers to conduct the appeal to the courts. Birmingham *News*, February 23, 1947. In contrast, the Southern Governors Conference treasury showed a balance of $9,459.23 at this time. In the December, 1945, meeting of the group at New Orleans, Attorney J. V. Norman was authorized to represent the Governors in the contest. His fee, if the case ended in the Federal Court for the Northern District of New York, was to be $7,500. In case of appeal to the Supreme Court it was to be increased to $15,000. The Southern Governors Conference operated, this writer estimates, on about $15,000 annually. Records of Conference finances have not been found, but occasional references in newspapers, Conference minutes, etc., indicate that the eight Conference states within Southern Territory contributed $2,000 a year, except for divided Louisiana, which gave $1,000. The states in Southwestern Territory did not contribute, since they were represented by their own lawyers in the rate campaign. The governors in Southern Territory appear to have drawn on executive contingent funds, special appropriations, etc., to keep the Conference solvent. The unusual expenses incurred during the extensive advertising campaign of the Governors during their early years was probably underwritten in large part by contributions from southern industry. Deflection of this support after 1939 left the group dependent on state funds. These conclusions are the author's best guesses, for the casual record keeping of the Conference leaves authoritative sources for a full history of the group exceedingly scant. The above-mentioned lawyer's fees were reported in *Proceedings of the Southern Governors' Conference, New Orleans, Louisiana, December 7-8, 1945*, pp. 9, 11.

the South's rates put it at a disadvantage and retarded the section's industrial development. Dissenting Justice Robert H. Jackson argued that the ruling would mean an increase of $50,000,000 in the freight bills of northeastern shippers, and commented that "this majority decision is on the same theory as when you put a lead on a fast horse to slow it down." Also in opposition was Justice Felix Frankfurter, who compared the establishment of lower class rates in the South and higher ones in the North to "burning down the barn to roast a pig."[64] Acceptance by the Court, however, of the ICC's conversion to the principle of uniformity gave final legal confirmation to the South's success. Reconstruction of the rate structure to fit the new rules is now a task for qualified rail men, shippers, and public servants. Politicians, meanwhile, are following jealously the course of this complicated adjustment; for their experience promises that victory in fact may yet prove harder to attain than has been achievement of their long-sought principle.

[64] Durham *Sun*, May 12, 1947.

CHAPTER VI

UNFINISHED BUSINESS

Wearied by an involved diagnosis of the freight rate structure at a recent meeting of the Southern Governors Conference, Governor Ransome J. Williams of South Carolina, voiced many a layman's reaction to the problem. "I am only an honest druggist," he said, "and I do not understand it." North Carolina's Governor R. Gregg Cherry, later chairman of the Conference, groped in similar perplexity for a politician's solution to the enigma. "Gentlemen," he urged, "I think we have all been sufficiently confused and we should get down to some kind of a vote. The only thing I haven't heard of is how about adding rates for horse racing in Kentucky."[1] Governor Cherry was a newcomer to the governors' campaign then; he has probably learned by now that a decade of voting and studying and resolving has developed no answer to the controversy's basic issue. Neither the Interstate Commerce Commission, Congress, nor the Supreme Court has on call the fabled genie whose breath will fill the lungs of unborn industry, and whose passage will daub the palid blue of southern skies with the flame and smoke of prosperous manufacture. The plants and factories of the North are not toeing the Mason-Dixon Line, poised for an administrative signal to send them racing southward. The hope of future balance in the region's production lies still, as a recent University of Alabama study concluded, in more business enterprise.[2]

Signposts of substantial achievement, however, mark the three broad avenues along which the South has waged its war on rate discrimination. The Southern Governors Conference put the issue squarely before the nation by successful prosecution of its limited complaint of 1937, and advocated vigorously ideas which the ICC accepted in its decision on the Class Rate Investigation. The threat of congressional action to establish national rate uniformity kept a slow fire under the Commission throughout the six years of general class rate survey; and Georgia's appeal to the Supreme Court further emphasized regional determination to wipe out territorial disparities. The ICC's 1945 "interim" ruling, ordering 10 per cent reduction in the class rates of the South and West, 10 per cent advance in those of Official Territory, and promising eventual uniformity, may not, it is true, result in any sudden expansion of southern industry. But if opinion

[1] Southern Governors Conference, *Transcript of proceedings at business meetings held at Admiral Semmes Hotel, Mobile, Alabama, July 20 and 21, 1945*, p. 24.

[2] Cited by John P. Ferris in remarks to the Southern Governors Conference, *ibid.*, p. 39.

is stripped of the characteristic exaggerations here recorded, sound conclusions may be drawn from speculation on the probable relation of class rate uniformity to the southern industrial future. Dr. Milton S. Heath, University of North Carolina economist, prefaces such judgments with a pertinent division of modern industry into two categories, one tending to be "raw material-, fuel-, and power-oriented," and the other "market-oriented."[3] Varied manufactures in the class sought by the South, he finds, are usually located by the "powerful attractive force" of the markets, without which "it has been impossible for any region to obtain a diversified industrial pattern. . . ." Existing southern industry is almost entirely of the first type, for economic forces greater than the rate structure have combined to gear the region's energies to the job of feeding roughage to market-oriented industries of the North, rather than performing the dual task of developing and serving a consumer market at home. The commodity rates promoted by these forces serve well the present needs of the heavy-goods shipper, but greatly narrow the market range and restrict the bargaining power of the small concern which is attempting to build up trade in high-grade goods. With freight charges based on what the bulk traffic will bear, varying from commodity to commodity, and unrelated to any fixed level, the South's little shippers have been hard pressed to make their weight felt at all. They look forward, therefore, to a uniform class rate structure, which, though less flexible, will guarantee more equal treatment to shippers of every degree. A dangerous curve in the road to economic equality is thus straightened. While the prospect of rapid new industrial growth is not heightened particularly by this relief, the competitive place held in the nation's markets by southern producers will be bettered. New England shippers, who have been selling in the South with the help of rates even lower than average Official levels, will lose their advantage in the interterritorial structure, and will face more vigorous competition at points in Official Territory where they are met by southern shippers. Economists suggest, however, that northern producers who in the past have bypassed the southern rate walls by serving the South through branch plants, may now find it possible to enter the southern market directly from northern production centers. On the other hand, new branches may be established to exploit low production costs in the South for the service of Official markets.[4] Many artificial elements, in other words, will be removed from the problems of industrial location; and the native advantages offered industry by the various regions may be compared on their own merits. The "new structure," according to Dr. Heath, "should play a positive role . . . in broadening the bases of Southern production, in

[3] Milton S. Heath, "The Uniform Class Rate Decision and Its Implications for Southern Economic Development," *Southern Economic Journal,* XII (1946), 231.
[4] *Ibid.,* 235.

enhancing and evening-out incomes, and in bringing about a better balanced and more prosperous economy."[5]

The interim rate adjustment ordered as a preliminary to eventual uniformity finally took effect on August 22, 1947.[6] The creation of a uniform classification system, necessary before equal class rates can be fixed, offers many a chance, however, for the delaying tactics at which the railroads are so competent. Walter R. McDonald, speaking as President of the National Association of Railroad and Utilities Commissioners, charged on January 10, 1948, that the roads would never complete removal of discriminatory rates "unless somebody gets a stick after them."[7]

Georgia's suit in the Supreme Court against railway rate bureaus has lagged behind the Governors Conference attempt to win class rate parity by reliance on the ICC. Hearings before a special master of the Supreme Court were held in August, 1946,[8] and further arguments were received in March, 1947, but no ruling has yet been made. The state's plea won moral support in January, 1947, when Alabama's Governor James E. Folsom announced shortly after his inauguration that he would ask the court's permission to intervene in favor of the Georgia complainants. Governor Folsom's action followed charges by ex-Governor Ellis Arnall that his would-be successor, Herman Talmadge, would pay off railway backers by dropping the case if his claim to the Georgia governorship were established.[9] When Governor M. E. Thompson won legal recognition of his title, however, continued prosecution of the state's suit was insured.[10]

A more serious threat to the Georgia Case has been introduced by passage of the Bulwinkle Bill (lately named the Reed-Bulwinkle Bill) over President Truman's veto on June 17, 1948.[11] By legalizing many activities of the rate bureaus attacked by Georgia, the measure seems to cut the legal ground from beneath the state's plea. If the problem of rate disparities alone is considered, however, the importance of both Georgia's suit and the Bulwinkle Act is minimized. A Supreme Court decision in Georgia's favor, supporting the state's contention that discriminatory rates are a result of

[5] *Ibid.*, 237.
[6] Greensboro *Daily News,* August 21, 1947.
[7] *Ibid.*, January 11, 1948.
[8] Birmingham *News,* February 23, 1947.
[9] *Ibid.*, January 24, 1947.
[10] *Ibid.*, March 20, 1947.
[11] Greensboro *Daily News,* May 12, 29, June 18, 1948. The Bill had passed the House of Representatives with comparatively little opposition on December 10, 1945, but had died on the Senate floor in the closing sessions of the 79th Congress. The House vote at that time was 277-45 for passage—a reflection of the energy with which shippers both North and South pushed the measure. The Bill passed the 80th Congress by a 272-53 vote in the House, and by voice vote in the Senate. President Truman's veto was overriden by a 297-102 vote in the House, and by a 63-25 vote in the Senate. Representative Ed Gossett, of Texas, declared that $1,000,000 had gone into the campaign for the Bill's passage, and charged that its supporters were going "up and down the land getting resolutions passed by chambers of commerce."

unlawful collusion among the roads, would simply return the job of fixing proper rates to the door of the ICC. Passage of the Bulwinkle Bill has added to the Commission's powers the authority to control rate-making methods already practiced by the roads. In either event, opinions established by the Commission in the Class Rate Decision offer the surest promise of relief to the South.

The relatively temporary issues of the freight rate campaign, however, do not approach the depth of the conflicting philosophies represented by the Georgia Case and the Bulwinkle Act. Marriage of this conflict to the rate arguments has obscured its significance, and thrown out of balance the normal weight of the opposing parties. Governor Arnall's unwise assumption of headlined personal responsibility for the Georgia suit, and his casual dismissal of the long crusade waged by the other southern governors,[12] has contributed notably to the failure of these debates to win in the South the serious consideration they deserve. By his police court technique of impugning the integrity of Southerners who do not share his ideas,[13] the Georgia leader may have destroyed his hope of restoring the

[12] *Regulation of Rate Bureaus,* p. 426.

[13] *Ibid.,* pp. 420-421, 495. In the Senate hearings Governor Arnall for three days made bald charges that men prominent for years in the freight rate fight had failed to support his case because of their subservience to the railroads.

When asked his opinion of why J. V. Norman, chief attorney for the Southern Governors Conference, had testified that the Bulwinkle Bill should be passed to insure orderly rate making, Arnall said: "I tell you that I thought there was such a thing as legal ethics among lawyers." After explaining that he considered Norman indirectly in the hire of Georgia, through the Governors Conference, and on this fact based his view of the lawyer's advocacy of the Bulwinkle Bill, Arnall added, "Of course, in explaining Mr. Norman's attitude I submit that he, by and large, is a rate lawyer and makes his living appearing before rate tribunals, representing shippers and rails, and therefore I discount what he says because he is not a disinterested party." Within two days after these remarks Norman forwarded to the Committee a telegram he had received from Governor Chauncey Sparks, of Alabama, which declared, in part: "We, Governor Caldwell, of Florida, Governor Cherry, of North Carolina, Governor Davis, of Louisiana, and myself, members constituting the Freight Rate Steering Committee of the Southern Governors Conference, do not think you have violated any ethics of your profession in appearing before a Senate committee in favor of the Bulwinkle Bill. . . . We have continued your employment for the Southern Governors in their rate fight because of your ability and success; and you have done a good job for the South."

Governor Arnall further condemned the position of E. L. Hart, chairman of the Atlanta Freight Bureau, and the most prominent commercial rate witness presented by the Southern Governors in each of their cases. He stated that Hart had first encouraged his suit, and then changed his mind. "Now, why he should change positions," the Governor said, "I can only say that the railroads are very influential, very powerful, are conducting a strong lobby, and Mr. Hart works for a living."

A blanket assault was also made on the shipper organizations of the South which had supported the Bulwinkle Bill. Arnall argued that "this conspiracy is so broad and has so much economic power that no shipper dare oppose the wishes of the railroads. They are threatened. They are intimidated, they are frightened." When Senator Clyde Reed, of Kansas, listed some of the many city and state traffic leagues which had supported all the Southern Governors efforts but favored the Bill, he replied: "I, in explanation of that, say that these people have been through economic

once-eloquent voice of a prouder South. For Governor Arnall has attempted an authentic revival of the curiously archaic tongue of the Old South's spokesmen for state rights. Although his reputation is that of a New Dealer, he has consistently sought a better future for Georgia through the state's own resources and powers.[14] He won the aid of powerful federal officials in his exercise of the right of his state to seek justice by direct appeal to the Supreme Court, but the Georgia Case is nevertheless a major threat against loosely interpreted federal authority. When warned by worried southern shippers that elimination of the rate bureaus would kill chances for a "national" transportation system, he urged that free competition, supported by alert state authorities, would offer more adequate guarantee of equal treatment than would the sleepy-eyed vigilance of the ICC. He denounced the modern view that public needs may be best served by centralized-but-controlled public services, and declared his faith in an older, somewhat neglected view of free enterprise. The nation's producers and shippers united in their effort to pass the Bulwinkle Bill and to preserve what they regard as the necessary, if legally questionable, functions maintained by private rate bureaus. In doing so, however, they have ignored warnings from old-school liberals that the law will "open the way to the most potent monopoly this country has ever seen."[15] The voices in lonesome opposition would undoubtedly be stronger had Governor Arnall not lost the sympathy of well-organized forces over the South which might have followed wiser leadership.

Specialists in freight rate affairs frequently dismiss the governors' campaign as an example of political shadow-boxing, and continue their sober treatment of rate revision as a purely economic problem, still securely nested in linguistic underbrush.[16] Such an interpretation only suggests

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compulsion forced into being in favor of this Bill. . . ." The Governor explained his own ability to withstand the pressures he described by declaring that "I am doing about the most unpopular thing I could do. Who puts up the money for political campaigns?"

A few months later, Governor Chauncey Sparks, chairman of the Governors Freight Rate Steering Committee, made clear his faction's attitude toward the Georgia Case. He declared in a speech at Birmingham that the Southern Governors Conference had used the only way possible to achieve parity. "The question of conspiracy or the violation of any anti-trust laws was never involved, because these matters do not enter into the deliberations of the Interstate Commerce Commission. . . . It is settled that no Court has a right to fix rates. While it may have the right to declare violations of anti-trust laws and punish for such violation or order a dissolution of agreements in violation, it could not fix schedules of rates over any given area."

[14] Ellis Gibbs Arnall, *The Shore Dimly Seen* (New York, 1946), pp. 165-207.

[15] Marquis Childs, Birmingham *News,* January 24, 1947.

[16] For examples of this approach, see A. J. Ribe, "Kangaroos in the Freight Rates," reprint from *Nation's Business* (February, 1944); Thurman Sensing, "Freight Rates and Southern Progress," reprint from *The Tennessee Engineer* (March, 1944); C. E. Widell, "Freight Rates with a Southern Accent," reprint from *Nation's Business* (January, 1940). Ribe and Widell are professional traffic agents, and Sensing is Director

profound ignorance of political facts of life. The southern governors—all the governors: statesmen and the demagogues and the hacks—have pooled their resources for ten years, and have so worried at the heels of the ICC, Congress, and the nation that they have won their point. Their consistent advocacy of specific action rather than pious invocation for a more prosperous southern future has been maintained despite the concerted opposion of the most influential industrial forces in the region. Many organizations and individuals have contributed to the freight rate campaign, but the Southern Governors Conference is the solid base from which the sporadic energies of occasional supporters have been directed. Its success merits more than burial beneath the vanished headlines by which its brief meetings and poorly understood victories were reported.

Students of the unco good, it is true, generally use too fine a screen to sift Conference activities into their righteous chronicles of progress in the South. A combination of crusaders, business men, politicians and research agencies is sure to result in a type of compromise not always attractive. Failure, however, to recognize the worth of such union would represent critical misjudgment in a region still seeking to lay the persistent ghosts of a troubled past. Worthy reform can scarcely mount the spavined nag of political confusion without loss of dignity—a small enough sacrifice, when profit for the South is so great.

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of Research for the Southern States Industrial Council. Economists writing for such publications as the *Southern Economic Journal* and the *Journal of Land and Public Utility Economics* generally confine themselves to technical questions involved in rate revision. This author believes that by such concentration, and by the omission of more than passing reference to the political history of rate revision, these impartial observers have obscured the real cause of favorable ICC action on southern complaints.

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